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JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
(Edited by H. B. Adams, 1882–1901)

J. M. VINCENT
J. H. HOLLANDER W. W. WILLOUGHBY
Editors

VOLUME XXV

INTERNATIONAL AND COLONIAL HISTORY

BALTIMORE
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INTERNAL TAXATION IN THE PHILIPPINES

BY

JOHN S. HORD
Collector of Internal Revenue in the Philippine Islands

BALTIMORE
THE JOHNS HOPKINS PRESS
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PRELIMINARY NOTE.

The "Internal Revenue Law of Nineteen Hundred and Four," enacted by the Philippine Commission on July 2, 1904, repealed all of the old Spanish laws, then remaining in force and imposing internal taxes. It substituted in lieu of such taxes a system of internal taxation based largely on the American policy of obtaining a maximum of revenue from the manufacture, sale and consumption of articles of luxurious or optional use and a minimum of revenue from other sources. It has seemed wise to preface this paper with a brief summary of the various Spanish internal taxes obtaining in the past and especially at the time of the American occupation of the Philippine Islands. This will afford opportunity to students of tax problems and tax administration to judge as to the relative merits of the existing tax system, and of that which it replaced, and to form an intelligent opinion as to the necessity for the change.

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INTERNAL TAXATION IN THE PHILIPPINES.

I.

The Old System.

The earliest record of excise taxation proper in the Philippine Islands is of a tax on the value of jewelry and golden trinkets which Governor Gonzalo Ronquillo, 1580–83, obliged the natives to pay to the insular treasury on pain of the confiscation of such ornaments as were concealed from the tax assessors. Before this time a tribute, or head tax, of one gold *maiz*, equal to about 3 *reales*, was being levied annually on each Indian and was made payable in money, cloth, rice or other staples at the option of the tax payer. The Indians were divided into *encomiendas* (royal grants), and the *encomendero* (grantee) usually collected the tribute in person, accompanied by a squad of arquebusiers. The principal Indian in each locality was required to deliver the tax for each Indian in his vicinity. Each *encomendero*, out of the money or produce thus collected, paid a per capita tax to the insular treasury. In 1577 this head tax was raised to 8 *reales* and later to 10 *reales*.

During the next two hundred years the head tax, or tribute, and occupation taxes collected from Chinese persons continued to constitute the main sources of internal revenue, although a few minor taxes, such as stamped paper and mint charges for the coinage of money were also introduced. In 1620 the total revenues were 593,922 pesos of which 300,000 pesos represented refunds from the treasury of Mexico of customs duties collected in the port of Acapulco on goods imported into that country from Manila. Of the internal revenue taxes Chinese residents paid 8,250 pesos as tribute and 112,000 pesos as occupation taxes.

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The tribute, or head tax, paid by the Indians amounted to about 80,000 pesos. The expenses of the Spanish government in the Philippine Islands during 1620 were 850,734 pesos; the deficit, between the receipts and disbursements, of 256,812 pesos was made up by withdrawing that sum from the Mexican treasury.

By the beginning of the seventeeth century Spanish merchants had built up a lucrative export trade with Mexico and other parts of Spanish America. They desired a monopoly and during the entire seventeeth century and the larger portion of the eighteenth century the Spanish Crown, at the request of the exporters of Cadiz and Seville, issued a series of *cedulas,* or royal decrees, prohibiting trade between Manila and the Mexican port of Acapulco, or so limiting and imposing such restrictions on such trade as to amount to a virtual prohibition. Tomás de Comyn, a writer of that period, in his work "The State of the Philippine Islands," declares: "Scarcely will it be believed in the greater part of civilized Europe that a Spanish colony exists between Asia and America whose merchants are forbidden to avail themselves of their advantageous situation, and that as a special favor only are they allowed to send their effects to Mexico once a year, but under the following restrictions. . . ."

Thus it will be seen that it is no new experience for the Philippine Islands to be disappointed in their endeavor to get an American market for their surplus products and that in the late action, or non-action, of the United States Senate history but repeats itself. No one, however, believes that it will take the American people, as it took the Spanish Crown, two hundred years to right this wrong.

Late in the eighteenth century Spain adopted a more liberal policy toward the Philippine Islands and such measures were put into effect as soon resulted in the revival of their export trade not only to America but also to Europe and Asia. The relatively prosperous condition that ensued made possible the collection of larger sums as internal taxes

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and the adoption of a more modern system of taxation. It soon became unnecessary for the viceroy of Mexico to draw on his cash box to help the Philippines to meet their budget of expenses. In 1782 the Government took over the monopoly of the tobacco produced in the Islands, and controlled the entire output of leaf tobacco and manufactured product until 1883 when the monopoly was abolished. Attempts to control the distillation of spirits by Government monopoly of the industry were made as early as 1712, but were abandoned from time to time. In 1787 a definite policy of Government control of the spirit business was adopted and prosecuted until 1862, in which year the monopoly was finally done away with, and two years later the manufacture and sale of all kinds of liquors was declared free. In 1834 the Government took over the monopoly of the sale of opium and in 1850 still further increased its revenue through the establishment of an official lottery, converting the profits derived from the sale of tickets to the insular treasury.

Meanwhile the rates of the head tax, or *cedula personal* as it had come to be known, had been increased and different classes of *cedulas* established, at rates graded from one and a half pesos to thirty-seven and a half pesos per annum. Chinese persons were taxed at the highest rate, as, indeed, when it came to classification for purpose of taxation, whether occupation, business, or what not, Chinese merchants were always put in the first class. Toward the end of the nineteenth century internal taxes on all kinds of industrial enterprises, on the coinage of money, on forest products and on the rentals of urban property were added. In 1817 the total internal tax collections for insular purposes were 1,346,472 pesos; at the time of the American occupation the internal revenues amounted annually to nearly 12,000,000 pesos, without including surtaxes, amounting to several millions more collected for municipal purposes. Of the total insular revenues over 9,000,000 pesos were paid out as salaries and less than 300,000 pesos were

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devoted to the maintenance of pubic schools and to public works.

During the fiscal years 1896–97 the Spanish Government collected in the Philippine Islands internal taxes as follows:

1. Contract for the sale of opium, 576,000 pesos.

2. Government lottery, 1,000,000 pesos.

3. Mint charges for coinage of money, 200,000 pesos.

4. Tax on urban property, 140,280 pesos, representing 5 per cent. of rental values after deducting 25 per cent. of rental values for repairs to buildings.

5. Royalties on forestry products, 122,000 pesos.

6. Documentary stamp taxes, 870,000 pesos, imposed by royal decree of May 16, 1886, and included, besides receipt and other ordinary documentary stamp taxes, 100,000 pesos worth of postal stamps and 220,000 pesos worth of stamps affixed to telegraphic dispatches.

7. *Cedulas personales,* or capitation tax, 7,000,000 pesos. During the three centuries, or over, of the Spanish domination the head tax, originally levied as a tribute on the Indians, grew to be not only the most important source of revenue but even to be more important than all other sources combined. It was a direct tax and the average annual payment of each adult male, at the time of the American occupation, was about 5 pesos.

8. The *Industria* tax, on all kinds of commercial and manufacturing enterprises, trades, professions and occupations, 1,400,000 pesos. This tax was imposed by royal decree of June 19, 1890, and next to the *cedulas personales,* and the customs duties, was the most important source of insular revenue.

Of the above taxes the contract for the sale of opium, the government lottery and the mint charges for the coinage of money were suspended at the time of the American occupation; the tax on rentals of urban property was subsequently repealed by the Philippine Commission and a real estate tax assessed on the market value of agricultural holdings and city property was imposed. By various general orders of the Military Governors and acts of the Philip-

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pine Commission during the first five years of the American occupation the *cedula personal* tax was reduced in amount from an average of 5 pesos per adult male to a straight tax of 1 peso, thus reducing the revenues from this source by more than 5,000,000 pesos per annum. And through the elimination of many documents subject to stamp taxes under the Spanish regime and radical reduction in the tax rates on other documents, the documentary stamp tax collections dropped from 870,000 pesos during the fiscal year 1896–97 to about 240,000 pesos during the fiscal year 1902–03. There was a slight increase in the collections from the *Industria* taxes and the royalties on forestry products during the fiscal year 1902–03 as compared with the collections during the fiscal year 1896–97. But the loss in revenue due to the decrease in the rate of the *cedula personal* tax greatly exceeded the increase in the other tax collections. The internal tax collections reached a total during the fiscal year 1896–97 of nearly 12,000,000 pesos; during the fiscal year 1902–03 they did not reach 4,500,000 pesos.

During the Spanish regime the internal revenue taxes accrued to the insular treasury and surtaxes were collected for the benefit of the provincial and municipal treasuries. By various general orders of the Military Governors and acts of the Philippine Commission, under the American administration, these surtaxes were abolished and the internal revenue collections accrued intact to the provincial and municipal treasuries. The real estate taxes imposed by the Philippine Commission also accrued to the provincial and municipal treasuries and for several years customs duties constituted the main, almost the only, support of the Insuar Government.

Under these circumstances the need for additional revenues for the benefit of the central government soon became apparent, and a system of internal revenue taxation modeled on the American plan naturally suggested itself to the insular administration. By the Spanish tax laws then in existence no adequate tax was being collected from

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such legitimate objects for excise taxation as alcohol and tobacco products. But the prosperity of the Philippine people was at a low ebb and doubt prevailed as to their ability to contribute such sums as would justify the imposition of a new tax. The rinderpest which killed the work stock, the locusts which devoured such crops as were planted, a series of epidemics, and roving bands of robbers coming as a legacy of the war, all contributed to perpetuate a condition of agricultural and commercial depression. But all of these handicaps, serious as they undoubtedly were, were matters of secondary importance and the deplorable fact that the Philippine Islands had lost their old markets for their surplus products and had been given no new market loomed as the most threatening factor in the problem. The lost cattle might be replaced, the robbers suppressed, the epidemic and plagues eradicated and, if that were all to be done toward conquering adverse conditions, prosperity would soon return. But without foreign markets in which to sell some of their principal products the import trade of the Islands would soon become as insignificant as their export trade had already become and customs duties, the last resource for support of the insular government, would also disappear. The Philippine Government found itself confronted by a most serious condition of affairs. The continuance of the road and harbor work and of the splendid system of public schools was threatened because of lack of funds for their maintenance. If such tariff arrangements were not made with the United States as would admit of the entry of Philippine products into the American market, then the Islands must inevitably revert, gradually but surely, to the primitive condition they occupied during the first two centuries of Spanish domination, when Spain, in order to keep the Spanish-American market intact for exploitation by her home merchants, prohibited the exportation of Philippine products to other countries.

That the Philippine Commission was alive to the needs of the hour is in evidence in the recommendations made from time to time in their annual reports to the home gov-

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ernment. On the occasion of his inauguration as first Civil Governor, on July 4, 1901, Secretary Taft said to the Filipino people.

> The people may reasonably entertain the hope that Congress will give them a tariff here suited to the best development of business in the Islands, and may infer from the liberal treatment accorded in its legislation to Porto Rican products imported into the United States that Philippine products will have equally favorable consideration.

At that time Porto Rican products entering the United States and American products entering Porto Rico were subject to 15 per cent. of the Dingley tariff rates—but even that modest burden was found to be too heavy and but little sugar, tobacco and cigars were exported from Porto Rico to the United States between 1898 and 1901. By a strange coincidence, on the very day that Governor Taft delivered his inaugural in Manila the Porto Rican Legislative Assembly met in special session in San Juan to decide whether or not the new internal taxes of that Island were yielding enough revenue to justify the recommendation to Washington that all customs restrictions on trade between the United States and Porto Rico should be finally eliminated. The recommendation was made and President McKinley, as empowered to do by Congress, issued a proclamation fixing July 25, 1901—the third anniversary of the American occupation of Porto Rico—as the day on and after which absolute free trade would obtain between the United States and Porto Rico. Since that time there has been a notable increase from year to year in the sugar, cigars and fruits sent from Porto Rico to the United States; notable from the Porto Rican view-point, because of sufficient importance to bring a fair degree of prosperity to that Island, but quite insignificant in the vast American market, as Porto Rican cigars and sugar were soon assimilated with the bulk of the home products—and forgotten.

With returning prosperity the Porto Rican people forgot their former opposition to their new internal revenue law, were able to consume, and did consume, more articles paying internal revenue taxes; were able to buy, and did buy,

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more American goods as well as more goods imported from European countries and which still continued to pay full Dingley rates upon their entry into Porto Rico. Whatever revenue was lost through the razing of the customs barriers between the United States and Porto Rico was more than replaced by the increased internal revenue collections and by the increased customs collections on certain goods imported from Europe. Within a couple of years the Porto Rican Legislative Assembly increased, with little or no opposition, several of the internal revenue tax rates; yet when Dr. Jacob H. Hollander, first Treasurer of Porto Rico under civil government, presented in 1900 to the Legislative Assembly, the internal revenue law for consideration, the opposition to its enactment was almost unanimous—it was claimed that the tax rates were so high as to make them "impossible of collection." With the increase in its revenues the Porto Rican government has been able to continue its road work, which has done and is doing so much to develop the agricultural resources of that Island, and has also been able to construct additional school buildings and to greatly extend and perfect its system of public instruction.

These were the benefits which, in his inaugural as Civil Governor of the Philippines, Secretary Taft foresaw for Porto Rico, as a result of unrestricted trade with the United States, and which he and his associates on the Philippine Commission have labored assiduously to secure for these Islands—so far, at east, in vain. In his report for 1902 to the Philippine Commission, Commissioner Ide, in his administrative capacity as Secretary of Finance and Justice, says:

> The rates now imposed by law upon imports into the United States from the Philippine Islands are still practically prohibitive and afford no encouragement to the industries of these Islands.

And again in his report for 1903 Commissioner Ide says:

> The only real effective manner in which the Congress of the United States can aid the insular revenues and aid the Filipino people by tariff legislation, is by an entire removal of or a great reduction in

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the duties imposed in the United States upon products of the Philippine Islands imported therein, and a repeal of that portion of the act of Congress which provides for a refund from the Philippine revenues of amounts collected in the islands as export duties on products shipped to the United States and there entered free of duty. The market thus opened to the people of these islands would give a greatly needed stimulus to industry here, and thereby largely increase the producing capacity of the people and their ability to live in a better manner, to pay a sufficient amount of taxes to carry on the government properly, and to buy the products of the manufacturers of the United States in greater measure. The two industries that need this help and consideration more than any others are the sugar and tobacco interests. . . . This subject is not discussed at length in this report, because it is understood that it will be presented more fully in the report of the civil governor to the Commission, but the discussion is entirely pertinent and vital to the question of insular revenues.

From the report of the Philippine Commission to the Secretary of War, for 1904, at which time Civil Governor Luke E. Wright was President of the Commission, the following excerpts are taken:

The taxation imposed by the Dingley tariff upon sugar and tobacco imported into the United States is very heavy, and is prohibitive so far as concerns the Philippine Islands. The civil governor in his last annual report to the Commission pointed out the languishing state of both these industries and explained that owing to the loss of their work animals by rinderpest and the damage done to their crops by locusts the people were much discouraged and were barely able to cultivate their estates. He also pointed out that their foreign market was exceedingly restricted and that prices were low. . . . Aside from being a measure of simple justice, nothing which Congress could do would have so tremendous a moral effect upon the people of the islands as to permit their sugar and tobacco to enter the United States without the imposition of any duty, or with the imposition at most of a low duty only. It is difficult for them to appreciate the soundness of the reasons which give this benefaction to Hawaii and to Porto Rico and refuse it to them.

. . . . . .

We desire to call attention to the injustice effected upon the revenues of the islands by section 2 of the act of Congress approved March 8, 1902, which provides that the Philippine government shall refund all export duties imposed upon articles exported from the

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islands into and consumed in the United States. Under the provisions of this section there has been collected in the Philippine Islands since its enactment down to the close of the fiscal year 1904 the sum of $1,060,460.20 United States currency, which is refundable. These refundable duties are principally upon hemp exportations to the United States, and are in effect a gift of that amount to the manufacturers of the United States who use hemp in their operations, and whether so intended or not it is manifestly a discrimination in favor of our manufacturers as against those of foreign countries. No good reason is perceived why this bounty to American manufacturers should be extracted from the treasury of the Philippine Islands, and it is respectfully submitted that the law authorizing it should be repealed.

But the Congress of the United States postponed from session to session action along the lines recommended by the Philippine Commission. With a deficit threatening the insular treasury it was decided to enact an internal revenue law for the Philippine Islands, in the hope that after it was in successful operation the same measure of justice that had been extended to Porto Rico, through the removal of the customs duties on its exports to the United States, might also be extended to the Philippines. Discussing the subject of inadequate insular revenues Commissioner Ide, in his annual report for 1902, says:

A reasonable system of internal-revenue taxes by which large industries, corporations, and the manufacturers of liquors, tobaccos, and cigars contribute a reasonable sum for the protection which they receive from the government, and for the franchises that are secured to them, ought to provide a material addition to the available resources and to prevent further deficits.

Accordingly the preparation of an internal revenue bill devolved upon Commissioner Ide, as Secretary of Finance and Justice, and the history of its preparation, discussion, enactment and enforcement is contained in the succeeding pages of this article.

For many years commerce within the Philippine Islands had been cursed by a heterogenous mixture of silver Spanish-Filipino and Mexican pesos, together with silver and copper coins from many neighboring countries and colonies, and even hammered copper pieces used by the

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mountain tribes. None of these coins were on a gold basis. They constituted the exchange media and they fluctuated so violently in value as to convert the most formal business transaction into a mere gamble, and made the audit of tax collections—figured at the official rate obtaining at the time each particular coin was taken in as a tax collection—almost as difficult and expensive an undertaking as the actual collection of the taxes themselves.

In Porto Rico the transition from a siver to a gold basis was accomplished with little difficulty. About 5,000,000 pesos worth of silver and copper pieces, mostly Spanish provincial coins, supplied the commercial needs. One of the first acts of the American Military Governor of that Island was to fix the value of the silver peso at sixty cents gold. There the rate was held and late in 1900 the Washington Government sent to Porto Rico about $3,000,000, American money, and the 5,000,000 pesos of provincial coins were promptly redeemed and sent to Washington. Some difficulty was at first experienced due to contraction, and as a result of merchants and others arbitrarily increasing the value of the goods to the number of dollars and cents, American money, that they had previously received for similar goods in provincial pesos and centavos. With the increase in the export over the import trade of the Island this difficulty soon disappeared.

In the Philippine Islands the change to a non-fluctuating standard was not so easily accomplished as it was in Porto Rico. There was grave danger, among other dangers, of too great a contraction if American money was introduced in the Philippines to replace the local currency as was done in Porto Rico. After careful consideration the problem was solved through the establishment of a gold standard with a theoretical gold peso, similar to the theoretical gold yen of Japan, and the coinage of a silver peso equal in value to exactly fifty cents of United States money. This plan was carefully designed and faithfully executed. The redemption of the mass of local coins then in circulation was begun in 1904 and completed early in 1905.

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For nearly two years the new Philippine Currency has satisfactorily supplied the needs of commerce in the Islands, and the element of speculation in all kinds of business ventures, in so far as such speculation was caused by the instability of the old exchange media, has been entirely eliminated. Incidentally the operation of collecting taxes and accounting for collections, has been greatly simplified. Through the adoption of the new Philippine Currency, at the time it was adopted, there was removed one of the main difficulties in the thorny path along which the new internal revenue law was destined to travel.

In subsequent reference to money values in this article the words "peso" and "centavo" will be understood as meaning the Philippino peso and centavo, equal in value to exactly fifty cents and one-half cent, respectively, of United States money.

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II.

The New Law.

The original draft of the existing internal revenue law was prepared in the United States during the months of June and July, 1903, by the then Secretary of Finance and Justice of the Philippine Islands, now Governor-General, Henry C. Ide, assisted by the present writer, who was charged with the delivery of the proposed act to the Philippine Commission in Manila, which he did in the month of August, 1903. During the following month of September Secretary Ide returned to Manila from the United States and during the succeeding seven months a careful study was made of the then existing Spanish tax laws and of industrial conditions and methods and importance of the manufacturing industries.

With the additional knowledge thus obtained on the ground such modifications were made in the original draft of the proposed act as seemed to be necessary to prevent serious economic friction, to avoid harassing merchants and manufacturers, and to provide such administrative machinery as would fit in with the somewhat unusual methods obtaining in the Philippine Islands in commercial transactions.

The tax rates were fixed as high as it was believed the articles taxed could stand without too greatly reducing their consumption. Additional sections were prepared, and incorporated in the proposed act, imposing taxes on such legitimate sources of excise taxation as were not considered when the original draft was prepared. It was believed that the Philippine Commission would prefer to have presented to it a scheme of taxation embracing all possible sources of revenue in order that it might select therefrom such articles, industries, trades and occupations as, in view of local economic conditions, it might deem proper objects of

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excise taxation. In any event it was deemed expedient that the internal revenue law, as finally passed, should include all of the objects thereafter subject to taxation, that all of the old Spanish taxes should be abrogated in one general repealing clause, so that in future merchants, manufacturers and professional men would be able to find in one law all of the internal revenue taxes imposed by statute, and not be obliged, as they had been in the past, to search through a multitude of laws.

Not until all of the pros and cons of each of the taxes in the proposed act had been carefully weighed did the Philippine Commission take it up for formal discussion with a view to its enactment. The bill in its final form was translated into Spanish and several thousand copies, English and Spanish text, were printed and distributed to the various chambers of commerce, to merchants and manufacturers, and to all who were interested enough in its contents to request a copy. The text of the bill was also published in the local periodicals. The internal revenue law was considered an important piece of legislation and, following an established precedent in such cases, the Commission set a day for a public discussion of the proposed law and all interested were invited, by announcement in the daily papers, to attend the public session and to join in the debate before the Commission.

On April 6, 1904, the day set, all of the leading distillers, tobacco manufacturers, merchants, bankers, insurance agents and other persons of Manila whose interests were affected by the proposed legislation, appeared, most of them in person, and all represented by counsel, before the Commission. Merchants and manufacturers of all nationalities, largely English, German, Spanish, Chinese and Japanese were in attendance; the Consul General of China and the Consul of Japan were present in the interest of subjects of those two Empires, many of whom are engaged in important commercial and manufacturing enterprises in the Philippine Islands. Political parties had their spokesmen, and representative manufacturers and merchants had journeyed from

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the provinces to Manila for the purpose of joining in the discussion.

Commissioner Ide introduced the proposed act and explained the need for, and benefits to be expected from, its passage. It developed, however, that the proposed measure had been weighed in advance, and had been found wanting, by those whose interests it affected. During several days, at morning and afternoon sessions, the Philippine Commission heard debates in which no one had a good word to say for the bill. The tenor of the remarks was that the measure was in principle rank economic heresy and if enacted would in practice result in an iniquitous confiscation of vested rights. Criticism of every detail of the bill was permitted, in fact invited, by the Commission. All of the oral arguments were taken down verbatim and in addition a mass of written memorials and protests were filed with the recorder of the Commission for further consideration.

Not until the last protest had been uttered, or filed, did the President of the Commission close the public hearings. The Commission then adjourned to the summer capital in the mountains of Benguet and there, far from the turmoil left behind at sea level in Manila, the bill was taken up section by section and considered in connection with each argument presented by the opposition—all of which the Commission had the recorder read. Announcement was made that further protests would be received and considered and for over two weeks protests and arguments against the proposed bill continued to arrive from Manila. Many of the arguments advanced against the bill contained valuable information and suggestions, of which the Commission availed itself in the amendments made to the original draft. Other arguments were so evidently based on ignorance of the provisions of the proposed law and on an unreasoning fear of its effects, that they were discarded. Thus it was recommended that the imposition of internal revenue taxes be postponed indefinitely because the burden would be more than the already languishing liquor industry could survive, and that neither should such taxes be imposed on the

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tobacco industry because that would mean the ruination of the only thriving industry in the Islands.

The internal taxes to which the people of the Philippine Islands had become accustomed in the past, had nearly all been taxes of direct payment. It was not therefore a matter for surprise that they should fail to grasp the meaning of indirect taxes such as were contained in the proposed law. The shifting of tax payments they could not understand,— it was to their way of reasoning a new and dangerous departure. Thus responsible manufacturers argued with the Commission, in all sincerity, that if they were made to pay, as the proposed law provided, the taxes on the output of their manufactories, that such tax payments, based on what their normal output had been in the past, would represent in the course of a year a sum several times greater than the value of their entire capital stock, buildings and installation of their plant; that, therefore, the proposed law was monstrous, inasmuch as it would inevitably result in their absolute bankruptcy within a few weeks, or at most months after its enactment.

The few who came to understand that the consumers were the ones who really paid the tax, still remained hostile. They claimed that the increase in price, due to the tax, would put the poor man's cigarette and *vino*—a popular native liquor—entirely beyond his reach. Cigarettes and *vino,* they claimed, were in the Philippines not luxuries but, on the contrary, absolute necessities. This position they maintained in all seriousness. They claimed that alcohol was an important food product and a certified copy of an analysis and opinion of a French chemist was presented to the Philippine Commission in which it was stated that all food taken into the human stomach was there converted into alcohol as a necessary part of the process of assimilation.

The Philippine Commission remained at the summer capital over two months and a large portion of that time was devoted to a consideration of the proposed law. The present writer presented to the Commission a report on

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his experience in Porto Rico in the enforcement of the internal revenue law of that Island, with which, as chief of the bureau of internal revenue, he was charged for over two years. It was shown that there the hostility to the new taxes was also well nigh universal at the time they were first proposed but that within a year or so after they had been put in operation they were accepted as constituting a wise and equitable scheme for internal taxation.

Before returning to Manila the Commission amended the proposed law by reductions in most of the tax rates, by simplifying several of the regulations for the administration of the law, by eliminating certain penal provisions to which specific objections had been made, and by removing from the law, in toto, the taxes proposed on corporations and on legacies and inheritances. It was believed that to tax corporations, as such, might discourage investors and keep out of the Islands capital urgently needed for their development; corporations were however taxed in other portions of the law in the same manner as private individuals. The proposed inheritance tax was similar to the more modern systems lately adopted by several of the States, providing liberal exemptions to next of kin and a graduated rate of tax increasing as the propinquity of relationship decreased and the amount of the inheritance increased. Under ordinary conditions this tax is most equitable and imposes scarcely any burden. Due to the fact that in the Philippine Islands estates of decedents consist largely of lands and city property and that it was not the general custom to partition such estates, and also for other weighty reasons, the Philippine Commission wisely decided that a tax on inheritances would impose an undue burden and it was eliminated from the proposed law.

As amended the act was again printed in English and Spanish, again widely distributed and all interested were again invited to a public discussion of the amended draft to be held before the Commission in Manila late in the month of June. As a result of this second discussion a few minor amendments were made and the "Internal

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Revenue Law of Nineteen Hundred and Four" was enacted on July the second of that year. The taxes on the manufacture and sale of alcohol and tobacco products and matches, on banks and on insurance companies were made effective on August 1, 1904; the remaining taxes on January 1, 1905.

Perhaps under no scheme of government could more ample opportunities be provided for the people to appear before the legislators, and make clear their wishes, than were the opportunities which the Commission allowed the taxpayers of the Philippine Islands when the internal revenue law was under consideration. Notwithstanding this the hostility to the law persisted for over a year after its enactment and determined, but futile, efforts were made to have it repealed.

Spain and China are two of the most conservative nations of the earth, and men of those two nationalities own the bulk of the manufacturing and mercantile concerns in the Philippines. Their interests were therefore vitally affected by the new internal taxes. The advantages of the new system of taxation were explained to these representative business men, but they remained skeptical. The old, tried and proved, is still a live force in Spanish character and often determines a line of conduct. They did not hesitate to condemn the evils of the old nor fail to appreciate the benefits of the new tax law. But all things considered they still were of the opinion that, "*Mas vale diablo por conocido que angel por conocer,*" the nearest English equivalent of which would perhaps be—"Better to suffer a known devil than to trust an unknown angel."

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III.

Results.

Since its enactment "The Internal Revenue Law of Nineteen Hundred and Four" has been amended only in such minor details as administrative experience dictated. The following is a condensation of the tax rates as provided and being collected at this time:

Annual License Taxes.

Brewers	200 pesos.
Distillers	200 pesos.
Distillers whose daily output does not exceed 4 hectoliters	48 pesos.
Rectifiers of distilled spirits	200 pesos.
Retail liquor dealers	48 pesos.
Retail *vino* dealers	8 pesos.
Wholesale liquor dealers	200 pesos.
Retail dealers in fermented liquors	40 pesos.
Wholesale dealers in fermented liquors	60 pesos.
Dealers in manufactured tobacco	8 pesos.
Manufacturers of tobacco	20 pesos.
Manufacturers of cigars and cigarettes	20 pesos.
Peddlers of manufactured tobacco, or distilled, manufactured or fermented spirits	16 to 80 pesos.

Alcohol and Tobacco Products.

On each liter of proof spirits	20 centavos.
After January 1, 1907, the above tax	25 centavos.
On each gauge liter of beer, lager beer, ale, porter and other fermented liquor	4 centavos.
On each kilogram of snuff	32 centavos.
On each kilogram of chewing tobacco	48 centavos.
On each kilogram of smoking tobacco	48 centavos.

Cigars, as follows:

When wholesale price is 20 pesos per thousand or less, each thousand	2 pesos.

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When wholesale price is 50 pesos or more than 20 pesos per thousand, each thousand ..... 4 pesos.
When wholesale price exceeds 50 pesos per thousand, each thousand ..... 6 pesos.

Cigarettes, as follows:
Weighing not more than 2 kilograms per thousand, each thousand ..... 67 centavos.
After January 1, 1907, the above tax ..... 1 peso.
Weighing more than 2 kilograms per thousand, each thousand ..... 2 pesos.
On each gross of boxes of matches of not more than 120 sticks to a box ..... 40 centavos.
Over 120 sticks to a box, a proportionate additional tax. Imported matches pay the same tax as matches of domestic manufacture.

Banks and Bankers.

One eighteenth of one per cent. each month on average deposits.
One twenty-fourth of one per cent. each month on capital employed.
One twelfth of one per cent. each month on average amount of circulation.
An additional tax of one per cent. each month on average amount of circulation issued beyond the amount of paid in capital.

Documentary Stamp Taxes.

Bonds, debentures, and certificates of indebtedness, on each 200 pesos, or fractional part thereof, of face value ..... 20 centavos.
Certificates of stock, whether on organization or reorganization, on each 200 pesos, or fractional part thereof, of face value ..... 20 centavos.
Sales, agreements to sell, memoranda of sales, or deliveries, or transfer of shares of stock, on each 200 pesos or fractional part thereof, of face value. 4 centavos.
Certificates of profit, or certificates showing interest in the property or accumulations, on each 200 pesos or fractional part thereof, of face value.... 2 centavos.
Bank checks, drafts or certificates of deposit, not drawing interest, and payable at sight or on demand ..... 2 centavos.

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Bills of exchange, drawn and payable within the Philippine Islands, on each 200 pesos, or fractional part thereof, of face value	2 centavos.
Drafts drawing interest, and payable otherwise than at sight or on demand, on each 200 pesos or fractional part thereof, of face value	2 centavos.
Promissory notes, other than issues for circulation, or any renewal thereof, on each 200 pesos, or fractional part thereof, of face value	2 centavos.
Certificates of deposits drawing interest, or order of payment of any sum of money otherwise than at sight or on demand, on each 200 pesos, or fractional part thereof, of face value	2 centavos.
Foreign bills of exchange, drawn in but payable out of the Philippine Islands, on each 200 pesos, or fractional part thereof, of face value	4 centavos.
Letters of credit, including orders by telegraph, express company and steamship companies, drawn in but payable out of the Philippine Islands, on each 200 pesos or fractional part thereof, of face value.	4 centavos.
Insurance policies, life, on each 200 pesos, or fractional part thereof, of face value	10 centavos.
Insurance policies upon property, including rents or profits, against peril by sea or inland waters, fire or lightning, on each 4 pesos, or fractional part thereof, of amount of premium charged	2 centavos.
Insurance policies, or bond of indemnity for loss or damage from any cause (except life, marine, inland and fire insurance) and all undertakings accompanied by guarantee obligations, on each 4 pesos, or fractional part thereof, of premium charged	2 centavos.
Policies of annuities, on each 200 pesos or fractional part of the capital of the annuity, or should the capital be unknown, then on each 200 pesos or fractional part thereof of 33⅓ times the annual income	10 centavos.
Each bond of indemnity, and every other bond not mentioned	50 centavos.
Certificates of damage, or any other certificate or document issued by captains of the port or marine surveyors	20 centavos.
Certificates of notaries public	20 centavos.
Certificates of any description required by law and not otherwise specified	20 centavos.

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Receipts or memoranda for money paid, when the amount exceeds 30 pesos	4 centavos.
Warehouse receipts for goods held in storage	20 centavos.
Bills of lading, for foreign shipment, each set	10 centavos.
Bills of lading, for local shipment, when value of goods exceeds 5 pesos, each copy of each set	2 centavos.
Tickets, to United States or foreign ports, when passage cost does not exceed 60 pesos	1 peso.
When passage cost exceeds 60 pesos, but does not exceed 120 pesos	2 pesos.
When passage cost exceeds 120 pesos	3 pesos.
Power of attorney or proxy for voting at an election for officers of a company, etc.	20 centavos.
Power of attorney to sell or rent or collect rent on real estate, or sell stocks, bonds, or securities, or collect dividends or perform any acts not elsewhere specified	20 centavos.
Lease or rent of any real estate, tenement or part thereof, for period of 1 year or less	20 centavos.
For period of time more than 1 year, and not more than 3 years	50 centavos.
For period of time more than 3 years	1 peso.
Mortgages, secured by either real or personal property, when the amount for which the mortgage is given is not less than 1000 pesos nor more than 3000 pesos	50 centavos.
And on each 3000 pesos, or fractional part thereof, in excess of the first 3000 pesos, an additional	50 centavos.
Deeds of real estate, when true value received is more than 200 pesos, and not more than 1000 pesos	50 centavos.
And for each additional 1000 pesos, or fractional part thereof, an additional	50 centavos.
Charter party, of any vessel, when the registered gross tonnage is not more than 300 tons	6 pesos.
When the registered gross tonnage is more than 300 tons, and not over 600 tons	10 pesos.
When the registered gross tonnage is more than 600 tons	20 pesos.

CEDULA PERSONAL TAX.

On and after the first Monday in January and prior to the last Saturday in April of each year	1 peso.
On and after the last Saturday in April and prior to the first Monday in January, next following	2 pesos.
Persons arriving in the Philippine Islands after the last Saturday in April, and upon application within 20 days after arrival	1 peso.

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INSURANCE COMPANIES.

An annual tax of one per cent. on all premiums of insurance companies or agencies thereof doing business in the Philippine Islands.

Upon all reinsurance by a company which has already effected the insurance and paid the tax, one half of one per cent.

TAX ON FOREST PRODUCTS.

The various provinces in the Philippine Islands are divided into classes A and B, and the various native trees are divided into four groups.

On each cubic meter of timber which may be cut in any public forest or forest reserve in any of the provinces of the Philippine Islands for domestic sale or consumption, or for export, the following taxes are imposed:

On all timber included in the first group cut in any province included in class A..... 5 pesos.

When cut in any province included in class B, 2 pesos and 50 centavos.

On all timber included in the second group cut in any province included in class A..... 3 pesos.

When cut in any province included in class B, 1 peso and 50 centavos.

On all timber included in the third group cut in any province included in class A.....1 peso and 50 centavos.

When cut in any province included in class B..... 1 peso.

On all timber included in the fourth group, and on all non-enumerated timber cut in any province included in class A ..... 1 peso.

When cut in any province included in class B..... 50 centavos.

When timber cut in any province included in class A has been selected for felling by duly authorized forest officials, the rates on such timber shall be only such as are fixed in this section on timber cut in provinces included in class B.

The taxes imposed on ebony and camagon are charged on said timber with the sapwood still attached, and the number of cubic meters in each piece of timber so measured includes the sapwood attached to the same; and when ebony or camagon timber from which the sapwood has been stripped is presented for measurement and appraisal, the following taxes are imposed:

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On each cubic meter of ebony cut in any province included in class A .....13 pesos and 50 centavos.
When cut in any province included in class B..... 6 pesos.
On each cubic meter of camagon cut in any province included in class A ..... 8 pesos.
When cut in any province included in class B, 4 pesos and 50 centavos.
On all firewood consisting of *rajas* from sixty centimeters to one and one-half meters in length, and from seven centimeters to fifteen centimeters in diameter, for each one thousand ..... 1 peso.
On all firewood consisting of pieces of timber less than sixty centimeters in length and less than seven centimeters in diameter, per cubic meter..... 10 centavos.
On all gums and resins and other forest products gathered or removed from any province, on the actual market value thereof ..... 10 per cent.

MINING CONCESSIONS.

On each valid perfected mining concession granted prior to April eleventh, eighteen hundred and ninety-nine, as follows:
On each claim containing an area of 60,000 square meters, an annual license tax of..... 100 pesos.
And at the same rate proportionately on each claim containing an area in excess of, or less than, 60,000 square meters.
On the gross output of each mine an ad valorem tax equal to three per cent. of the actual market value of such output.

TAX ON BUSINESS, MANUFACTURE AND OCCUPATION.

Each merchant and manufacturer shall on the first day of January, 1905, or on the date thereafter on which such merchant or manufacturer engages in any mercantile or manufacturing pursuits, either on his own account or on commission pay a tax of 2 pesos.
And shall at the end of each quarter thereafter pay a tax at the rate of one third of one per cent. on the gross value in money of all goods, wares and merchandise sold, bartered or exchanged in the Philippine Islands.
Common carriers and livery stable keepers shall on the first day of January, 1905, or on the date thereafter on which engaging in such business, pay a tax of ..... 2 pesos.

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And shall at the end of each quarter thereafter pay a tax of one per cent. of the gross receipts from such business.	
Annual occupation license taxes, as follows:	
Stockbrokers, real estate brokers, custom house brokers, and merchandise brokers, each	80 pesos.
Pawnbrokers	200 pesos.
Theaters, museums, cockpits, concert halls, and circuses, each	200 pesos.
Billiard rooms, each table	10 pesos.
Lawyers, medical practitioners, civil engineers, mechanical engineers, mining engineers, land surveyors, and architects, each	50 pesos.
Dental surgeons and procuradores judiciales, each	40 pesos.
Undergraduates in medicine	10 pesos.
Chiropodists, manicurists, photographers, lithographers, engravers, and appraisers or connoisseurs of products, each	40 pesos.
Veterinarians, farriers, and proprietors of shops for repair of bicycles and vehicles, each	20 pesos.
Owners of race tracks in Manila, on each day races are run	60 pesos.
In the provinces not less than	20 pesos.

Exemptions from the payment of the various taxes imposed are provided in liberal measure in the law. All agricultural products of the Philippines are exempted from tax payments by the producer or the exporter. The Islands are dotted with small provision booths, the annual sales of which do not exceed 500 pesos in value, and are filled with small artisans, boatmen, owners of carabao carts engaged in freighting, and other persons such as tinsmiths, bakers, shoemakers, and others plying modest vocations; all of these are now exempted from the occupation and business license taxes they formerly paid under the Spanish *Industria* tax law. The Filipino who neither smokes nor drinks now escapes practically all internal tax payments, excepting the *cedula personal,* or capitation tax, and that tax has been reduced from an average of 5 pesos per annum, the rate during the Spanish regime, to 1 peso, the rate provided in the internal revenue law.

Under the *Industria* tax law merchants and manufacturers

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paid annual license taxes, in specific amounts, quarterly in advance. The tax was assessed on the character of the business done—the small merchant dealing in a certain line of goods with a limited trade paid the same amount of tax as was paid by the merchant in the same line with a big stock and a big business. Neither the value of the merchant's stock, nor the extent of his business, nor the amount of his profits, were used at all as a basis for assessing the old *Industria* tax. All merchants in a given line of business paid the same tax. The new internal revenue law repeals this inequitable system; it imposes a percentage tax on sales payable at the end of each quarter after the merchant has sold his wares and is best able to pay his taxes. The tax rate is 1 peso tax on each 300 pesos worth of sales; the small merchant pays a small amount as taxes and his tax payments increase in direct proportion to the increase in his business. Under the *Industria* tax law the merchant with modest capital was often so burdened with taxes as to make it difficult, or impossible, for him to save enough from his profits to extend his business.

Persons who manufacture cigars or cigarettes for their own consumption, who gather forest products for use in their homes or to build their houses or boats, or who engage in the sale of fish, meat, vegetables, and similar food products, in market places, are now all exempted from internal tax payments, regardless of the amount of their sales or of the quantity of the articles used or consumed. Agriculturists are exempted from the payment of taxes on their crops. Receipts for sums in any amount less than 30 pesos are exempt from documentary stamp taxes, as are a multitude of other documents, formerly subject to tax and the stamping of which often caused vexatious delays and unduly harassed business and professional men. Banks loaning their funds exclusively to agriculturists on real estate security are exempt from the tax imposed on the capital employed by other banks doing a general banking business. Premiums received for purely co-operative insurance are

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also exempted from taxation. Doctors whose professi services are devoted exclusively to charitable, religious, educational, or eleemosynary institutions are exempted from occupation tax payments.

The most radical change made by the new internal revenue law has consisted in the shifting of the bulk of the taxes on industries from articles of necessary consumption to articles of luxurious, or optional, consumption, and in the entire exemptions from insular taxation which are given to the multitude of petty trades and callings followed by the very poor, and to the small stores and provision booths scattered throughout the Islands. The old industrial tax law imposed a comparatively high rate of license tax on retail dealers in rice and other provisions and an infinitesimal tax on the manufacture and sale of tobacco and alcohol products; the new law exempts agriculturists, exporters, and very small dealers in commodities and imposes a percentage tax on the value of the sales made by the larger dealers, and also imposes an adequate tax on the manufacture and sale of alcohol and tobacco products.

The new internal revenue law also provides that the revenues from the cedula personal taxes shall be apportioned one half to the province and one half to the municipality in which they are collected; that certain license taxes on theaters, circuses, etc., shall accrue intact to the treasuries of the municipalities in which they are collected, and that of the remaining revenues 10 per cent. shall be apportioned to the various provinces and 15 per cent. to the various municipalities, in the proportion of their respective populations, and that the remaining 75 per cent. shall constitute insular revenues. Of the 15 per cent. of the general revenues accruing to the various municipal treasuries, under this provision of law, one third is set aside to be expended exclusively in the maintenance of free public primary schools.

It also provides for the organization of the bureau of internal revenue within the department of finance and justice, for the appointment by the governor-general of a collector

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of internal revenue as chief of the bureau, for the appointment by the collector, with the approval of the secretary of finance and justice, of a field inspection force of internal-revenue agents, gaugers, and storekeepers, and for the assessment and collection of the various taxes by the city assessor and collector of Manila and by the various provincial treasurers and their deputies under the general superintendence of the collector of internal revenue.

The administrative machinery, provided for the collection of the various taxes and for the prevention of frauds on the revenues, is similar in all essentials to the system installed in Porto Rico in 1901 for the enforcement of the internal revenue law of that Island. The successful operation of that system was fully described at the time by Dr. Jacob H. Hollander, then treasurer of Porto Rico.[1] Therefore, but the briefest reference will be made to the system at this time.

Internal revenue stamps of thirteen denominative values, pesos and centavos, are serially numbered, at each end, in the bureau of internal revenue and issued to the assessor and collector for the City of Manila and to the forty provincial treasurers and, by them, to their six hundred deputies for sale to taxpayers, for use in the payment of taxes. Persons subject to license taxes purchase stamps quarterly and affix them in one of the four blank spaces provided on the face of each license; at the end of the year all used licenses with the stamps attached are surrendered to internal revenue officers and returned to the bureau of internal revenue for audit and file. Manufacturers of cigars, cigarettes, liquors and other objects subject to tax, fill in and send along with each shipment of goods an official invoice sheet to which stamps, in payment of the tax on the goods described in the invoice, have been affixed and canceled. The stamps are so affixed to these invoices that when the invoice is removed from its stub, which remains in the possession of the manufacturer, one half of each stamp remains

[1] "Excise Taxation in Porto Rico," in The Quarterly Journal of Economics, February, 1902.

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attached to the stub and the other half goes forward, attached to the invoice, to be delivered together with the goods to the consignee. Each package of goods is branded with the assessment number of the manufacturer and the number of the official invoice which accompanies it in transit. By these means it is possible for the manufacturer, the carrier of the goods and the person to whom they are consigned to prove at any time, by the production of either the stamped invoice or stamped stub, that the taxes on any particular shipment of goods have been paid.

Merchants and other persons receiving goods subject to tax are required to keep the stamped invoices they receive from the manufacturers until called for by internal revenue agents, deputy provincial treasurers or their assistants. All internal revenue officers are required to supervise the operations of manufacturers in their respective districts, to check goods in transit and in the possession of merchants and others at the time they gather up the stamped invoices. All stamped invoice sheets are returned to the bureau of internal revenue for audit and file. Every taxpayer, whether merchant, manufacturer, gatherer of forest products, etc., is given a distinctive assessment number and is known officially by that number. The serial number of each stamp purchased by a taxpayer is credited to his assessment number, and he is allowed to use only the stamps so purchased and no others. When the stamped licenses and invoices, having served their purpose, are returned to the bureau of internal revenue for file, the serial numbers of the various stamps are checked against the assessment numbers of the taxpayers using them for the payment of taxes. By this means the reuse of stamps is effectually prevented, inasmuch as stamps once used are canceled, cut in two, and both portions removed from the possession of persons who might otherwise be tempted to reuse them. As will be seen, this system also makes it impossible for counterfeit stamps to go undetected. If an unnumbered stamp is used in the payment of a tax it is in itself an evidence of fraud. If the counterfeiter puts serial

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numbers on the spurious stamps issued by him such numbers will either be duplicates of official serial numbers already placed in the bureau of internal revenue on stamps already issued, or the numbers on the spurious stamps will be higher than the numbers yet reached in the official record.

The question as to whether the United States system of affixing stamps to boxes of cigars, packages of cigarettes, bottles and demijohns of liquors, etc., should be adopted in the Philippine Islands was carefully considered, and it was decided that such system was not locally applicable.

Charges are constantly being preferred in the Manila courts by manufacturers who claim that their trade marks are being falsified or imitated and that good quality cigars and other articles manufactured by them are removed from the boxes or other receptacles in which they are packed and inferior goods substituted. Some of these frauds are difficult of detection because of the ingenious manner in which they are contrived. The bottom of a cigar box is removed, the good cigars taken out, poor cigars put in their place, and the bottom of the box carefully returned to its place so as to show no signs of removal. A hole is drilled in the bottom of a bottle, the good liquor extracted by means of a double tube apparatus, poor liquor introduced, and the hole covered with a gob of melted glass.

Under these circumstances the futility of attempting to protect the revenues by the affixture of stamps across the lids of boxes, or corks of bottles, will be understood. Besides under the system adopted manufacturers find it a simple and inexpensive undertaking to affix a few stamps of high denominative values to an invoice for a large shipment of goods; if they had to put a separate stamp on each individual package of cigarettes, box of matches, etc., their operating expenses would be materially increased.

Upon the passage of the internal revenue law, on July 2, 1904, the civil governor, upon the recommendation of the Philippine Commission, appointed the present writer col-

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lector of internal revenues for the Philippine Islands and he has discharged the duties of that office since that date. It is, of course, impossible within the scope of this paper, to present more than a mere outline of the administrative difficulties encountered and overcome. Much opposition to the enforcement of the law was anticipated and prepared for in advance. It was believed at the start that the campaign would be largely one of education, and in the sequel that belief has been justified. As the law and its operation came to be more fully understood opposition vanished and the people not only became reconciled, but many, who had formerly opposed it, became its most ardent supporters. For over a year there has been little opposition either to the law or to the methods adopted for its enforcement.

As this article was being prepared Governor-General Ide resigned the duties of his office to his successor, General Smith. In his inaugural, recounting what America has accomplished in the Philippines, Governor-General Smith says:

> She destroyed without hesitation a wrong system of internal taxation which imposed upon the poor almost the entire charges of government, and for it she substituted a modern system of internal revenue which so distributes the load that every citizen is compelled to bear his fair share of the governmental burdens.

And this statement has remained unchallenged by any of the former opponents of the internal revenue law.

Still the original opposition to the law was not so easily overcome. The Manila press, that part which is published in Spanish, was at the start almost a unit in opposition. Self-seeking demagogues, as well as well-meaning but mistaken persons who spoke from conviction, stirred up strife and spread dismay among the more ignorant classes. Without waiting to experience the effects of the law merchants and manufacturers in some instances closed their places of business. Referring to this hostility, in a report made to the secretary of finance and justice, when the law had been two months in operation, the collector of internal revenue says:

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Of course the opposition to this law at this time can retard, but it can not prevent, its final success. The only regrettable feature to this opposition is that the smaller and more ignorant manufacturers of *vino* cigars and cigarettes have been and are being educated to an attitude of unreasoning hostility to this law. Therefore whenever the provisions of the law are strictly enforced, illicit stills and cigar and cigarette factories will begin to operate behind closed doors and in inaccessible regions. Long after the larger manufacturers shall have recognized, with satisfaction, that their opposition to this tax was a mistake and have settled down to the new order of things, they will have to suffer the illegal competition waged by these "moonshiners" and illicit manufacturers of all kinds.

By January 1, 1905, when the license taxes became operative, the situation had become acute and had it not been for the precautions taken by several of the provincial governors, and the sensible advice they gave the people, serious trouble might have resulted. But a small minority of the Filipinos can either read or write and the insular administration therefore found it a difficult task to explain to the mass of the people what the internal revenue law really provided. On January 17, 1905, the collector of internal revenue issued a "Notice to the Public" from which the following excerpts are taken:

Great misapprehension prevails in the minds of the poor and illiterate classes in these Islands as to the provisions of the "Internal Revenue Law of 1904." Fears persist notwithstanding the fact that several thousand copies of the Internal Revenue Law in both the English and Spanish languages have been distributed to the remotest corners of these Islands.

Certain individuals, who should be better informed, have called on small booth keepers and others and misinformed them regarding their duties under the provisions of the Internal Revenue Law and regarding the amount of taxes they would have to pay. It has also been stated to this office that certain municipal policemen and other local officials are playing on the fears of small traders; that after getting them to believe that they are delinquent in the payment of a tax, to which they are not subject, these officials promise, in consideration of bribes paid by the merchants, not to report their alleged delinquencies. These reports are now being investigated.

Under these conditions it has been deemed expedient to get in touch with the poor and ignorant classes throughout the Islands in the hope that after being informed of the exemption from taxation

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which is secured to them by the Internal Revenue Law they may no longer be deluded or submit to illegal exactions.

This notice will be printed in the Spanish language and in the various local dialects and will be posted generally throughout the Islands. A brief statement of the provisions of the law is given below. The co-operation of all those able to read, and who have the interests of their less fortunate neighbors at heart, is earnestly solicited so that none may remain in ignorance of their rights and duties.

. . . . . .

When the Internal Revenue Act was first presented to the Philippines Commission by Vice-Governor Ide, in April, 1904, he announced that the immediate beneficial results to be expected from its enactment would be the repeal of an inequitable system of taxation under which the poor man was paying more than his share, and in the providing of funds with which the primary-school system could be extended and needed public improvement could be completed or undertaken. He also announced that the ultimate aim in proposing this law was to make it possible for the Insular Government to remove, or greatly reduce the rate of, the real-estate tax and to recommend the removal of, or great reduction in, the customs duties on trade between these Islands and the United States. In this spirit the Internal Revenue Law was enacted and on its successful operation very largely depends what measure of prosperity and enlightenment these Islands will in the future enjoy.

Governor Wright has on several occasions advised representative citizens in these Islands to sink minor differences of opinion and to work together for the great prize of free trade, or some near approach to it, with the United States.

. . . . . .

In the Congress of the United States the fight is now being made by the friends of these Islands for such reductions in customs duties as will make it possible for Philippine products to find a market in that country. The President and former Governor Taft, now Secretary of War, are the champions of Philippine rights in the United States and their most serious opponents are the representatives of the selfish interests in that country who would exclude Philippine sugar, cigars, and other products from America. Those interests would like to see the Internal Revenue Law of these Islands fail. It should not take the people of these Islands long to determine where their true interests lie.

After a few months the people commenced to recognize the good points in the law but the manufacturers of liquors and cigarettes continued to clamor loudly that as a result of

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the tax the output of their manufactories had been greatly reduced and that they were on the verge of ruin. During the month of August, 1905, the Secretary of War and the Congressional party that accompanied him visited the Philippines. Several memorials and petitions were presented by the liquor and tobacco interests to Secretary Taft asking that the internal taxes on cigarettes and distilled spirits be either entirely removed or that the tax rates be radically reduced. Judging from statements made in some of these memorials it would appear that the Philippine Commission, by imposing a tax of half a centavo on each glass of liquor and of two centavos on each package of thirty cigarettes, had solved the temperance problem by annihilating the liquor and tobacco business; that the Commission by such a simple device had attained that which most of the nations of the earth had failed to attain through prohibitive tax rates, government monopoly, and actual prohibition.

But it was demonstrated that as a matter of fact, if any of the manufacturers in the Philippines had lost a part of their business, such loss was due to an increase made by them in the price of their wares in an amount not justified by the added internal revenue tax. So the taxes on liquors and cigarettes were not removed nor was the tax rate lowered. Tax paid cigarettes continued to be consumed at a normal average rate of 10,000,000 a day, and the consumption of distilled spirits and liquors is now very near the normal mark of 10,000,000 proof liters a year.

Since then opposition to the internal revenue law has been spasmodic and half-hearted. As the collection of the taxes was more completely made in remote islands, not at first satisfactorily covered, the revenue receipts increased materially from month to month. Spanish speaking Americans, to the number of sixty-five, were appointed as internal revenue agents, instructed in their duties, mounted and equipped and detailed to service in every part of the archipelago. They instruct both the taxpayers, speaking half a dozen dialects, and the six hundred native deputy collectors of

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taxes as to the duties imposed on them by the internal revenue law.

By careful instruction and warning the agents endeavor to prevent violations of the law and only report to the collector of internal revenue those who persist in the commission of frauds. Most of these offenses have so far been in the nature of delinquent license tax payments and of petty frauds through the removal of small quantities of non-tax-paid liquors, cigars, or cigarettes. With few exceptions small fines, administratively imposed and collected, have had the desired deterrent effect and there have been but few cases in which prosecution of the defrauders in court has become necessary. Speedy, light draught naphtha launches have been supplied agents in the provinces where distilleries are located, and have proved most useful in patroling the swamp lands on which is found the nipa palm from the sap of which crude spirits are distilled. At the time the internal revenue law was enacted there were over five hundred primitive stills in operation in various parts of Luzon and in some of the other islands. As the regulations for the control of distilleries are drawn more tightly the tendency among these small distillers is to combine and erect a few modern distilleries.

The internal revenue taxes as now being collected are satisfactory in amount. As to the urgent necessity for collecting internal revenue taxes, Commissioner Ide, in his report for 1904 as secretary of finance and justice, says:

> It is apparent from the budget hereinafter stated that it would have been impossible for the insular government to have maintained itself during the coming year without the additional revenue accruing from this new and important legislation. It is hoped that the results will ultimately be so satisfactory as to enable the government to reduce the rates of customs duties or to abolish the land tax in whole or in part.

During the fiscal year ended June 30, 1906, internal revenue taxes were collected as follows:

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Manufacturers of alcohol and tobacco products	4,328,144.37 pesos.
Licenses, dealers in alcohol and tobacco products	494,321.63 pesos.
Licenses, merchants, manufacturers and common carriers	1,365,392.50 pesos.
Licenses, occupations, trades and professions	308,184.49 pesos.
Mines and mining concessions	15,264.72 pesos.
Banks and bankers	155,160.50 pesos.
Insurance companies	20,181.18 pesos.
Documentary stamp taxes	166,167.38 pesos.
Cedulas	1,756,777.00 pesos.
Miscellaneous	125.13 pesos.
Forest products	193,638.01 pesos.
Total	8,803,356.91 pesos.

Under the apportionment provisions of the internal revenue law these collections accrue as follows:

To the insular treasury		5,122,871.80 pesos.
To the provincial treasuries:		
One half cedula taxes	878,388.50 pesos.	
Ten per cent. other collections	683,049.58 pesos.	
		1,561,438.08 pesos.
To the municipal treasuries:		
One half cedula taxes	878,388.50 pesos.	
Fifteen per cent other collections	1,024,574.37 pesos.	
Certain license taxes	216,084.16 pesos.	
		2,119,047.03 pesos.
Total		8,803,356.91 pesos.

Of the 2,119,047.03 pesos received by the various municipalities, as above, the sum of 341,524.79 pesos will, as provided in the internal revenue law, have to be devoted exclusively to the maintenance of free public primary schools.

The cost to the insular government for collecting the internal revenue taxes was a little over 5 per cent. of the amount collected; if to this be added the expenses defrayed from the provincial treasuries, the total cost would be not quite 7 per cent. In the United States, as a whole, the cost for collecting the internal revenue taxes has, in late years,

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been about 2 per cent.; but in many of the states the cost for collection is much higher than it is in the Philippines. Thus during the fiscal year ended June 30, 1905, the cost for collection was in Alabama, 11 per cent., in Arkansas, 25 per cent., in Georgia 14 per cent., in Hawaii 24 per cent., in New Mexico 13 per cent., and in North and South Dakota 11 per cent.

The refunds made from the internal revenue collections to the various provinces and municipalities exceed in amount the total taxes which they collected under the obsolete Spanish taxes repealed by the internal revenue law. The additional revenues which accrue from the internal revenue taxes to the insular treasury have made it possible for the central government to appropriate for the benefit of the various provincial and municipal treasuries a sum equal to the amount they previously collected during an average year from the real estate tax imposed under the American regime. This has made possible the suspension of the land tax collections in the provinces for a period of one year and has afforded some relief to agriculturists who, in the nature of things, are the main sufferers from lack of a foreign market for the products of their lands. During the suspension of the land tax collections a thorough reassessment of lands has been undertaken which, it is believed, will result in an equalization of values and a more equitable assessment in future.

As far as it had the power to go the Philippine Commission has gone in the reconstruction of the fiscal affairs of the Philippine Islands. What remains to be done to round out the good work the United States Congress alone can do. If the customs barriers are razed and Philippine products are allowed free entry into the American market the resulting prosperity in the Philippine Islands will mean greatly increased internal revenue collections and increased power to purchase American goods; this will in turn make it possible for the Insular Government to do without the customs duties on goods imported from the United States and will

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open another market to the American manufacturer. The internal revenue collections in Porto Rico increased about 40 per cent. within a few months after free trade was provided between that island and the United States.

There appears to be little warrant for the fears of the sugar producers and tobacco manufacturers in the United States that the removal of the customs duties would flood the American market with Philippine cigars and sugar. The American people now import from foreign countries much more sugar than the Philippine Islands could supply for several generations to come. The consumption of domestic cigars in the United States is now at the rate of eight billion a year, and the normal annual rate of increase is 2 per cent. The total exportation of cigars from the Philippine Islands to all countries is at present less than one hundred million a year, or about 1 per cent of the cigar consumption of the United States. If every cigar now exported from the Philippine Islands was sent to the United States the normal domestic cigar trade of that country would not be affected; there would probably be no increase in the consumption of American cigars for about six months, but after that the normal annual increase of about 2 per cent. would be resumed.

During the few years in which the admission of Philippine products to the American market has been under consideration the natural increase alone in the consumption of sugar and cigars by the American people has exceeded in amount the total production, both for domestic consumption and for export, of sugar and cigars in these islands. The insignificance of the entire Philippine crop as compared with the vast and growing demands of American consumers is too obvious to require further remark.

But insignificant as the Philippine production compared with the American production may be, the increase of even a few million dollars per annum in the export trade of the Philippine Islands is a matter of immediate vital interest and of far reaching importance to the Filipino people. It

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is the measure of the narrow border land lying between better methods of living, more schools, more roads and future prosperity on the one hand and commercial and agricultural depression, stagnation and eventual retrogression on the other.

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1794—1796

BY

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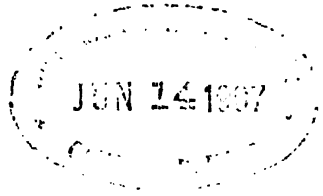

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PREFACE.

The Monroe mission to France, 1794–96, was one of the most important incidents in the early history of the United States. Upon this subject the Diplomatic Archives of the Department of State and the voluminous Monroe Papers in the Library of Congress have recently thrown open much material. Portions of the papers have been published, but the historians of this period do not appear to have made complete use of this mass of manuscript. President Gilman, in his excellent biography of Monroe, has given an impartial account of this episode, but the scope of the work, covering as it does the whole of a long career, imposes important limitations upon the treatment of a single period. A careful perusal of the manuscript sources reveals additional material which has an important bearing upon the inner history of the mission. It is the aim of this study to present a more detailed account of this diplomatic incident, in order that the circumstances and the motives of the actors may be more definitely established.

The author wishes to express his obligation to Professor Andrew C. MacLaughlin, who first suggested to him that the Monroe Papers would prove a fruitful source for historical investigation. Much aid in the present study has been afforded by the criticisms of Dr. J. C. Ballagh of the Johns Hopkins University, and of Mr. Stanislaus Murray Hamilton of the Department of State. The latter's edition of the Writings of Monroe has proved invaluable. Professor J. M. Vincent of the Johns Hopkins University has lent his kindly interest to the work, while Dr. Franklin L. Riley of the University of Mississippi has given valuable suggestions on the relations of Monroe to the Spanish negotiations. A paper on this subject, which embraces portions of this work, will appear in the forthcoming volume of the Mississippi Historical Society.

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THE MONROE MISSION TO FRANCE, 1794–1796.

INTRODUCTION.

In 1794 the troubles of American commerce had greatly increased. France, flushed with successful Continental campaigns, was engaged in the struggle with England, while the United States endeavored to preserve a strictly neutral attitude. This was a most difficult course, for both contending parties were constantly seizing American vessels and confiscating their cargoes. A further complication lay in the existence of a pro-British sentiment among the Federalists, the party in power in the United States, while the Anti-Federalists were equally ardent advocates of a close alliance with France. The Senate, representing the more conservative element, was probably inclined to Great Britain, while the House of Representatives, sharing the popular opinion more generally, strongly favored the French Republic. To meet this crisis, and effectually to protect American commerce without being forced into war with either France or England, formed a most difficult task for the administration.

As an avowed supporter of the monarchical régime, Gouverneur Morris, the American minister at Paris, was most unpopular with the republican government of France. When his recall was officially demanded, it was deemed essential to appoint a minister whose friendship for the French Republic was well known. To find such a man the government must look in the ranks of the Anti-Federalists. First, Robert Livingston declined the appointment; next, after considering Aaron Burr, the President offered the post to James Monroe, a native of Virginia and a Senator

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of republican proclivities that would render him especially acceptable to France. In making this appointment the administration was undoubtedly aware of Monroe's opposition to the rather pro-British policy of the Federalists. Already he had taken a decided stand in the Senate, remonstrating with Washington when it was rumored that Hamilton would be sent as envoy extraordinary to Great Britain.[1] Nor did the administration hesitate to acknowledge that the appointment of Monroe was forced by the exigencies of the situation. In the letter recalling Gouverneur Morris the Secretary of State intimated that the change was not due to personal dissatisfaction on the part of the President.[2] The natural inference from this statement is that the administration wished Morris to know that his retention was preferred and that his recall had been forced. A letter from the Secretary of State, criticising severely Morris' correspondence as hostile to the French Republic, shows, however, that Washington saw the absolute necessity of a change.[3]

Washington issued Monroe's credentials as minister to France on May 28, 1794. As the credentials stipulated that the office was to be held at the pleasure of the President,[4] it followed that the minister might be recalled at the executive discretion without the right to demand explanations. This condition of the appointment assumed additional importance in the controversy that followed Monroe's recall. After much deliberation Monroe decided to accept the difficult task.[5] In his letter of acceptance he promised to employ his utmost endeavors to promote the honor and credit of the administration.[6] In entering upon the mission,

[1] Monroe to Washington, April 8, 1794, Writings of Monroe, 1, 291–92.
[2] Secretary of State to Gouverneur Morris, April 27, 1794, Instructions, 2, 72–3.
[3] Edmund Randolph to Washington, January 26, 1794, Washington Papers, 80, 14.
[4] Credences, 1, 37.
[5] Monroe to Thos. Jefferson, May 27, 1794, Writings of Monroe, 1, 299–300.
[6] Monroe to Washington, June 1, 1794, Writings of Monroe, 1, 301–2.

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therefore, Monroe as a man of probity had expressed his wish to support the administration. Yet elements of discord are to be found at the very outset. A leader of the party opposed to the Anglo-American policy of the administration was to be sent to France, a country with which he was known to be decidedly in sympathy. The most delicate and subtle diplomacy was necessary to prevent such a minister, who had been practically forced upon the American government, from being betrayed by his intense sympathies into acts that would be construed as hostile to the administration that had sent him. The appointment of Jay, a Federalist in sympathy with a pro-British policy, as envoy extraordinary to Great Britain rendered Monroe's position all the more difficult. In carrying out its policy of seemingly strict neutrality, the American government had appointed representatives to England and France, each acceptable, as the representative of a great party in the United States, to the country to which he was accredited, each with instructions to secure the redress of grievances. Such a course was practically impossible, and was almost certain to end in a clash between the two ministers.

The mission into which Monroe entered falls into three distinct phases:

First. From the appointment of Monroe until the French government announced the receipt of definite news of the negotiation of the Jay treaty, May 28, 1794–January 5, 1795.

Second. From the definite news of the Jay treaty to its ratification by the President, January 5, 1795–August 19, 1795.

Third. From the ratification of the Jay treaty by the President to the end of the Monroe mission, August 19, 1795–December 27, 1796.

A conclusion as to the different questions bearing upon the mission will also be given.

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FIRST PERIOD.

From the Appointment of Monroe to the Definite News of the Jay Treaty, May 8, 1794–January 5, 1795.

As giving the main issues to which he should devote his attention, the official instructions to Monroe are most important. Above all, he was charged, in assuring France of the firm friendship of the President, to say that the United States did not recognize the right of foreign intervention in the affairs of the French Republic, and that the President extended his best wishes for the accomplishment of the Revolution. At the same time, the strict neutrality of the United States must be declared. The next part of the instructions significantly enjoined Monroe to obviate industriously any impression that Fauchet might have made by circulating reports of two parties in the United States, one republican and friendly to the French Republic, and the other monarchical, aristocratic and anti-Gallican. This injunction betrays especially the anxiety of the government to remove any suspicion of a pro-British policy.

Another important passage explicitly prohibited Monroe from negotiating a treaty of commerce, and from committing the United States to any specific declarations except where he was instructed. Compensations for spoliations and for the seizure of vessels at Santo Domingo must be insisted upon. If possible, the coöperation of France was to be secured in the negotiations for a treaty with the Dey of Algiers and in the adjustment with Spain of the Mississippi question. Obviously this part of the instructions was hard to fulfill. Without betraying the least sign of what the Federalist administration would consider undue complaisance, Monroe was to show the confidence of the United States in the French Republic and to obtain aid in important negotiations. He was, therefore, placed in the rather em-

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barrassing position of obtaining favors without making any reciprocal engagements.

In regard to Jay's mission the instructions were explicit. Suspicions of the motives of this mission were anticipated, and Monroe was told to assure the French government that Jay would make no engagements conflicting with those existing between the United States and France. Furthermore, he was to declare the motives of this mission to be to obtain immediate compensation for plundered property and to secure the restitution of the western posts. The utmost attention to this matter was enjoined, and Monroe was charged to deny with firmness any intimation of the least intention of the United States to sacrifice the connection with France in favor of one with England.[1] In the light of after events these instructions assume an added importance. Comparing the secret instructions to Jay, which of course Monroe did not see, with this statement, it is found that, besides the points revealed to Monroe, Jay was authorized to negotiate a treaty of commerce with Great Britain which would include stipulations that free ships make free goods and that there should be reciprocity of trade in navigation to the West Indies. These instructions do not actually conflict with what had been revealed to Monroe, but as Jay, except that he was to make no engagement invalidating the obligations to France, was given a wide latitude in negotiating the treaty, there was great danger of a conflict according to the way he should interpret the stipulations of the French treaty.[2] Whether intentionally or not, the instructions had revealed to Monroe only a part of Jay's real powers. From his instructions, therefore, Monroe was left in ignorance as to the proposed treaty with Great Britain, and was even led to believe that such a step was not contemplated. Furthermore, he was to impress this view of the Jay mission upon the French government. Yet, despite these instructions, he seems to have had an inkling of the truth. He could hardly suppose that an envoy extraordinary would

[1] American State Papers, 1, 688–89.
[2] Jay Correspondence, 4, 10–21.

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be sent merely to push the claims for spoliation and to insist upon the evacuation of the western posts.[3] This very suspicion must have increased the difficulty of his task. He himself was to gain everything possible from the friendship of France, while he could make no specific engagements and must suspect that he was practicing deception.

The course taken by the administration with reference to the Jay mission is open to criticism. The United States had a perfect right to conceal from France the real objects contemplated in sending an envoy extraordinary to England, but Monroe's instructions denied by implication that a treaty was contemplated. Doubtless it was feared that Monroe's French sympathies might make him indiscreet if the whole truth were to be revealed. There appears to have been a deliberate purpose to blindfold France in regard to the Jay mission and to employ Monroe, the minister who had been forced upon the government, as a means to this end.

It would appear as if every effort was made to remove any suspicion on the part of Monroe that he had been forced upon the administration, or that any pro-British policy was contemplated. At the outset the words of the administration were outwardly most friendly, for even Hamilton, the leader of the pro-British party, expressed his good wishes for the success of the new minister.[4] Also, the Secretary of State, Randolph, assured Monroe that the President, cherishing a desire for a close and friendly connection with France, had appointed him especially in view of his well-known sentiments in favor of the French Revolution.[5] But all these assurances did not suffice to dissipate the suspicion of the true objects of the Jay mission, which was strengthened by several letters that Monroe received from Anti-Federalist friends before his departure. Among others Robert R. Livingston and Thomas Jefferson wrote opposing the mission of Jay and advocating war with England. Jef-

[3] Monroe to Thos. Jefferson, May 4, 1794, Writings of Monroe, 1, 292–94.

[4] Alex. Hamilton to Monroe, June 11, 1794, Monroe Papers, 7, 904.

[5] Writings of Monroe, 3, 386–87.

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ferson intimated that, if the executive involved the country in war with France, many citizens would refuse to serve.[6] So, while assured of the good wishes of the Federalists, Monroe left with the suspicions of his own political associates still ringing in his ears.

Monroe reached France August 2, 1794, just five days after the fall of Robespierre. The French government was in the utmost confusion. Moreover, the sincerity of the American friendship was very much doubted by several members of the Committee of Public Safety. Added to the evil already accomplished by the great unpopularity of Monroe's predecessor, Gouverneur Morris, was the suspicion of Jay's real purpose. It was even hinted that Monroe had been sent as a mere blind, and there was much doubt as to receiving him.[7] In so hostile an atmosphere only a man such as Monroe, whose friendship with France was well known, could have succeeded. After he had presented his credentials to the Committee on Foreign Affairs, he waited in vain for recognition. Despairing of receiving any attention in the confused state of French affairs, he then resolved upon one supreme effort. As the National Convention was the ultimate source of authority and represented the people, the great mass of whom, he had been assured, desired recognition, he addressed a note to the President asking that a day be appointed upon which to receive him.[8] This master-stroke met with success. The impulsive French officials resolved to welcome with open arms the representative of the great sister republic.

In contrast to the cold demeanor of the Committee of Public Safety, the Convention, with the warmth so characteristic of the French temperament, prepared to receive in their midst the American minister. This reception of Monroe on August 26 was most dramatic. Presenting his

[6] Robert R. Livingston and Thos. Jefferson to Monroe, March 13 and 22, April 18 and 24, 1794, Monroe Papers, 7, 897, 898, 899, and 902.

[7] Writings of Monroe, 3, 390–91.

[8] Monroe to President of the National Convention, August 13, 1794, Writings of Monroe, 2, 11–12.

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letters to the Convention, he made a speech, perhaps a little too enthusiastic, emphasizing the benefits to be derived from a closer union of the two republics and his own readiness to do everything possible to promote harmony.[9] Although this address was rather more ardent than the instructions warranted, it was hardly so explicit as the resolutions he presented from the two branches of Congress. In answer to a letter from the Committee of Safety, the Senate expressed in general terms its friendship and its wish for the establishment of peace in the French Republic. The letter from the House of Representatives was much more cordial. The President had been instructed to write with *unequivocal assurance* of the friendship of the lower house. Following these instructions, Randolph, who, as Secretary of State, composed the answer, emphasized the affection of the United States for the French people as the champions of liberty, and declared that "The successes of those who stand forth as her (liberty's) avengers will be gloried in by the United States, and will be felt as the successes of themselves and other friends of liberty."[10] Surely nothing could be more expressive of an entire sympathy for France and a wish for her success, even in the struggle with Great Britain, than this last letter. The reply of the President of the Convention was exceedingly cordial, emphasizing the friendship that had existed between the two republics and especially the help that France had extended against Great Britain, "once so haughty, but now so humbled."[11] In conclusion the President gave Monroe the fraternal embrace. As a proof of their friendship, the Convention wished to provide Monroe with a house at the expense of the state, an offer which a provision of the constitution of the United States compelled him to decline.[12]

[9] Writings of Monroe, 2, 13–15.

[10] Secretary of State to the Committee of Public Safety, June 10, 1794, American State Papers, 1, 674.

[11] Reply of the President of the Convention, American State Papers, 1, 674.

[12] Monroe to Committee on Foreign Relations, August 22, 1794, Writings of Monroe, 2, 30. Cf. Foreign Relations of the U. S., 1876, October 23, 1876.

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By this public reception Monroe had exceeded his instructions. Carried away by his sentiments in favor of the Revolution, in the enthusiasm of the moment he had definitely departed from the path of strict neutrality, and had committed the United States to a warm predilection for France. By his tacit consent to the words of the President of the Convention, Monroe had ranged himself upon the side of the enemies of Great Britain, and so had involved his country. While delicate negotiations with Great Britain were in progress, such a course was perilous and placed the American government in a most embarrassing position. Unless Monroe's action was disavowed, it would be impossible to maintain the attitude of strict neutrality. As a result Monroe now began to feel the displeasure of a hostile administration.

Several letters written by Jay to the President show the embarrassment which Monroe's public reception in France had produced in London. Doubt of the neutrality of the United States had arisen as a result of Monroe's speech[13] and of the letters written in accordance with the resolutions of Congress. Later Jay assured Washington confidentially that, had not the knowledge of the President's probity prevented such sentiments as those expressed by Monroe from being ascribed to his orders, the negotiations would have failed.[14] In another *private* letter Jay complained to Randolph that, while he had intentionally kept it out of his public letter, Monroe's speech had caused an uneasy sensation, not only in the public mind, but probably in the British Cabinet as well. Jay added that, despite his disinclination to call attention to these facts, he felt that his duty required him to do so.[15] Likewise in a private letter Randolph expressed to Jay his regret for the uneasiness caused the British ministry by the letters he had written at the instance of the two houses of Congress. He laid the blame for their fulsomeness upon the resolutions in accordance

[13] Jay to Washington, September 13, 1794, Jay Correspondence, 4, 58–60.
[14] Jay to Washington, March 6, 1795, Jay Corresp., 4, 162–63.
[15] Jay to Secretary of State, September 13, 1794, Despatches, 1.

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with which he had tried to write them. At the same time he assured Jay of his friendship for England and of his hope that the treaty would speedily be concluded.[16]

The Secretary of State did not reveal to Monroe his intention to disavow as far as possible responsibility for the sentiments so publicly expressed before the French Convention. He wrote that, though his speech on this occasion had been the subject of much criticism, the President would await Monroe's account and a copy of the original before making further comments.[17] The fact that the correspondence with Jay was private, and was not printed when the rest of his letters were called for by Congress, is most significant. In view of the very ardent resolution passed by the lower house the administration would hardly have cared to present a complete and public disavowal of Monroe's indiscreet utterances. While he had in his speech gone somewhat beyond his instructions, there remained to be explained away the troublesome letter written in accordance with the resolution of the House of Representatives. Therefore, Randolph resorted to the expedient of informing the British government through Jay of the real views of the administration. This resolution of the lower house had revealed the wide-spread sentiment in America in favor of France which the government of the United States was so assiduously trying to disavow. In this dilemma the executive was merely reaping the fruits of the policy of secretly favoring Great Britain while outwardly preserving a strict neutrality. Indeed, even the Federalists, in view of these official letters, refrained from much open criticism of Monroe's conduct on this occasion, fearing that, if they indulged in such strictures, they would cast slurs upon the American government itself.[18]

In case the negotiations with Great Britain failed, it was

[16] Secretary of State to Jay, November 12, 1794, Instructions, 2, 233–37.

[17] Secretary of State to Monroe, November 17, 1794, Instructions, 2, 238–40.

[18] Jas. Madison to Monroe, December 4, 1794, Madison Papers, 5, 72, 73.

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essential to maintain friendship with France. So, while this confidential correspondence was being carried on with Jay, the Secretary of State continued to urge Monroe to cultivate zealously the good will of France, and to remove every suspicion that a connection with Great Britain was preferred. Becoming confidential, Randolph expressed to Monroe his belief that the Jay mission was doomed to failure. In such a contingency he emphasized the necessity of retaining the friendship of the French Republic.[19] These letters show clearly an intention to retain the hold upon France lest the projected treaty with England fall through. Added to the private correspondence between Jay and Randolph, the evidence seems to point to a set purpose, at least on the part of the Secretary of State, to favor an understanding with Great Britain if it could be secured. Monroe, meanwhile, must be used to preserve peace with France. But even had there been no design of a commercial treaty with England, an attitude of strict neutrality required that Monroe should not have made his reception so public and thus committed the United States so firmly and openly to the French alliance. Doubtless if Monroe had known the full extent of the negotiation undertaken by Jay, as a man of discretion he would have been more guarded during so critical a time, and would have made his reception in France, if possible, quieter. Yet it is doubtful if, in the then confused condition of French affairs, a less bold step would have gained public recognition for the American minister. He himself suffered no qualms of conscience in regard to the matter. In giving an account of his reception he told Randolph that by this means he had tried merely to dissipate impressions of the unfriendly attitude of the United States toward France, and that he believed he had succeeded in restoring the confidence that had been lost.[20] In a later letter to Randolph, Monroe defended his conduct from the many criticisms that had arisen. In reply to the allegation

[19] Secretary of State to Monroe, September 25 and December 5, 1794, American State Papers, 1, 678, and 690–91.

[20] Monroe to Secretary of State, August 25 and September 2, 1794, Writings of Monroe, 2, 31–41.

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that he had shown a marked partiality for France at this reception, he claimed that, under the circumstances, it was necessary to conciliate as well as to express decidedly the preference of the United States for France. If he had acted otherwise, he did not believe that he would have been successful. Indeed, he intimated that in the whole affair he had endeavored to follow the spirit of the Secretary's instructions. In view of the letter written in accordance with the resolutions of the House of Representatives, this statement is most plausible. This course, he added, he had felt more inclined to take as he had observed in France a greater inclination to be accommodating to the United States.[21] Monroe evidently had erred in interpreting too literally what he must have known to be contrary to the real spirit of the Federalist policy.

Despite any errors of judgment he may have committed in securing his reception, Monroe cannot be accused of neglecting the objects of his mission when once an understanding with the French government had been established. In a note of September 3, 1794, he complained that, by the seizure of American vessels, France had violated the stipulation of the treaty with the United States that free ships make free goods. He pointed out that with Great Britain the case was different, inasmuch as that country was not an ally, and had made no treaty regulations with the United States in this regard. Monroe also complained of the onerous commercial restrictions which required that permission be procured before an American cargo could be sold or a vessel sail from a French port. As a proof of friendship he asked that French ports be opened to American vessels. A decree having already passed for the relief of the sufferers by the Bordeaux embargo, Monroe requested that a similar indemnity for supplies seized at Santo Domingo be given. He materially weakened his position by adding that he had not been required to ask the withdrawal of this decree which had restricted American commerce, and that,

[21] Monroe to Secretary of State, September 15, 1794, Writings of Monroe, 2, 55–66.

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if it was deemed beneficial to the French Republic, the United States would submit to it.[22] Such a statement was unnecessary and placed the United States in the position of asking a favor rather than of demanding rights already guaranteed by a treaty. The Secretary of State rightfully remonstrated against such a course, and declared that in no event should Monroe have spoken of submission to a decree which infringed upon the treaty.[23] Certainly diplomatic finesse demanded that this modification of his note should have been omitted.

With such an indiscreet weakening of his demands, it may well be understood that Monroe's note did not meet with immediate success, although he continued to press his demand upon the French government. The reports of the consuls, he said, showed a frightful picture of loss and difficulty. Above all, the release of American seamen who had been arbitrarily imprisoned must be procured. In a supplemental note upon American commerce Monroe endeavored to show the Committee on Foreign Relations that it was altogether to the interest of France to protect neutral commerce in order to obtain the supplies that would certainly be needed.[24] The Committee of Public Safety at last noticed these repeated requests by asking Monroe to put them in writing. When, in private conversation, a few members of the Committee asked Monroe if he insisted upon the execution of the treaty, he replied that he could say nothing beyond the observations already made. He admitted, however, that while it was to the interest of France to protect neutrals, the President had not instructed him to insist upon this particular point.[25] This answer, which should have been an evasion, was another mistake undoubtedly due to peculiar views of diplomatic frankness on Mon-

[22] Monroe to Committee of Public Safety, September 3, 1794, Writings of Monroe, 2, 55–66.
[23] Secretary of State to Monroe, December 2, 1794, American State Papers, 1, 689–90.
[24] Monroe to Committee of Safety, October 18, 1794, Writings of Monroe, 2, 88–96.
[25] Monroe to Secretary of State, November 7, 1794, Writings of Monroe, 2, 98–108.

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roe's part. Doubtless his previous admission had caused the French government to ask the question in order to ascertain just what the United States would demand as distinguished from what was asked merely as a favor.

Monroe's diplomatic naïveté with regard to commercial grievances worked no harm. The Committee of Public Safety on January 7, 1795, transmitted to him an *arrêté*, copies of which had been sent to the Commission of Marine and Commerce. This important decree, issued upon Monroe's complaint of the spoliations to which American commerce had been subjected, ordered that means should be adopted to render to American navigators their full rights as citizens of a friendly nation. Moreover, the French government revoked the decree of May, 1793, which had ordered that French warships and privateers should take all neutral ships found in the ports of France that carried the goods of an enemy. Instead, the *arrêté* established the principles of the treaty of 1778, stipulating that neutral vessels were not to be disturbed even when citizens of hostile countries, except soldiers or sailors in actual service, were on board. The merchandise of hostile powers, however, was to be seized until French merchandise on neutral ships was made free. Provisions destined for hostile places might be seized only if the port was actually invested.[26] The former of these last two clauses was of course a retaliatory thrust at Great Britain. This *arrêté* is most important, marking the practical reëstablishment of the treaty of 1778. Despite mistakes, Monroe had succeeded in conciliating the French government sufficiently to procure a withdrawal of the obnoxious decrees against American shipping and to secure fair treatment for American seamen. A report of Fulwar Skipwith, the American consul-general at Paris, emphasizes the importance of this diplomatic achievement. In addition to a list of one hundred and three American vessels that had suffered by the Bordeaux embargo, there were one hundred and seventy claims for confiscated cargoes and for other

[26] Committee of Public Safety to Monroe, January 7, 1795, Despatches, 4, 156 and 170–72.

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spoliations under the decrees which had been rescinded as a result of Monroe's negotiations.[27] Although actual payment of damages for past injuries had not been secured, the *arrêté* did away with future grievances of this kind. The French government had also promised to settle for the spoliations already made.

In accordance with his instructions Monroe also endeavored to obtain the help of France in adjusting with Spain the dispute over the navigation of the Mississippi River and the southern boundary of the United States. To appreciate fully the importance of these negotiations and the influence which Monroe exerted, it will be necessary to review the previous history of the controversy. The treaty of 1763 had defined the parallel of 31° and the northern boundaries of the Floridas as the southern limits of the English possessions. Also, it guaranteed to all British subjects the free navigation of the Mississippi River for its entire length. The Peace Treaty of 1783 confirmed these boundaries, conferring the privileges of navigation upon the citizens of the United States as well as upon those of Great Britain.[28] As the free navigation of the Mississippi River was all important to the people of the western country at this time, the American government considered that the assent of Spain to this stipulation should be secured as soon as possible. Accordingly, the Continental Congress in 1785 appointed John Jay plenipotentiary to negotiate with Spain a treaty establishing the right to navigate the Mississippi and fixing the southern boundary line. But évidently Spain did not view with favor the expansion of the new republic so close to her borders. The Spanish premier, Gardoqui, asserted that, as England did not have the right to give away such a privilege, the claim of American citizens to free navigation of the Mississippi River was ill-founded.[29] An un-

[27] Report of Fulwar Skipwith, October, 1794, American State Papers, I, 749–59.

[28] Memoir of Thos. Pinckney, August 10, 1795, American State Papers, I, 537–38.

[29] Jay's Commission, July 21, 1785; Gardoqui to John Jay, May 25, 1786, American State Papers, I, 248–49.

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satisfactory agreement was reached between Jay and Gardoqui to the effect that American vessels should convey goods down the river to a fixed point where a magazine was to be established. There Spanish boats would meet them to cover the rest of the distance to New Orleans. Whether seagoing vessels might convey these products from this port was to form the subject of future negotiations.[30] This agreement, which was a virtual surrender of rights on the part of Jay, was not confirmed either by the United States or by Spain. The same fate met a proposed treaty which resigned for twenty-five years the right of the United States to free navigation. A very annoying situation thus arose. For all practical purposes American citizens possessed no rights of navigating the Mississippi River through Spanish territory.

With the growth of the western country, the necessity for free navigation greatly increased. Unless produce was carried over the Alleghany Mountains, or by the Great Lakes, the Mississippi was the only outlet. Also there was need for some port at which goods might be transferred from the small river craft to ocean-going vessels. By onerous tolls and restrictions placed upon American vessels descending the Mississippi, the Spanish governors of Louisiana continually evinced their hostility to the United States. The rapid increase in production rendered such a condition so intolerable that Kentucky and Tennessee even threatened to secede. The Spaniards tried to take advantage of this discontent in order to stir up rebellion against the United States. To save the situation, on January 11, 1792, Washington named William Carmichael and William Short commissioners to negotiate with Spain a treaty for the free navigation of the Mississippi by American citizens, for the free use of a port thereon, and for the establishment of the southern boundary.[31] Upon the arrival of the commissioners, they found Gardoqui much disinclined to listen to their

[30] Carmichael and Short to Secretary of State, April 18, 1793, American State Papers, I, 259–61.
[31] American State Papers, I, 131.

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demands. Instead, he proposed to ratify the unconfirmed agreement with Jay.[32] As these terms were altogether inadmissible, the negotiations lagged greatly. As late as January, 1794, two years after the appointment of the commissioners, the Spanish government still evinced an utter indifference to the settlement of the questions in dispute with the United States.[33]

The failure of the negotiations with Spain and the continued interference with trade on the Mississippi by the Spanish governors produced much discontent in the United States. Goaded to fury by the slight attention which they believed had been paid to their interests, the inhabitants of the western country proposed to assert by force their rights to free navigation. In the spring of 1794 General George Rogers Clark tried to form an expedition with large detachments from Kentucky and the back country of South Carolina which should march south and open the Mississippi to their vessels. This expedition was secretly aided by Genet, the French minister to the United States, who even commissioned Clark.[34] The men engaged in the service were promised bounties from the lands in east and west Florida which, it was hoped, would be conquered from the Spaniards. The iron works in Kentucky cast cannon for the proposed invasion, while the citizens of Lexington subscribed to defray the expenses of the expedition.[35] Only the prompt action of the government in calling upon the governor of Georgia to use the militia of that state, if necessary, prevented the realization of these plans.[36] This incident showed the current sentiment of the western country and also showed the

[32] Carmichael and Short to Secretary of State, January 7, 1794, American State Papers, 1, 440–42.

[33] Carmichael and Short to the Secretary of State, January 7, 1794, American State Papers, 1, 440–42.

[34] Genet to Minister of Foreign Affairs, July 23, 1793, Instructions to French Minister in the United States, October 23, 1794, American Historical Association Report, 1903, 2, 220ff. and 721ff. Hammond to Grenville, March 7, 1794, Henry Adams, Transcripts, Hammond, 1793–94.

[35] Constant Freeman to Secretary of War, April 18, 1794, American State Papers, 1, 459–60.

[36] Secretary of War to Governor of Georgia, May 14, 1794, American State Papers, 1, 480.

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importance of settling the Mississippi question. The commissioners seemed unable to get any definite assurances from the Spanish government, although the American authorities were experiencing the greatest difficulty in restraining the increasing indignation of the western people at the great injustice with which they appeared to be treated. Such was the situation when Monroe was sent as minister to France. It was to be his care, in accordance with his instructions, to put an end to the deadlock at Madrid by securing the intervention of France.

Firmly convinced of the great danger to the United States in a peace between France and Spain unless the questions of the navigation of the Mississippi and of the southern boundary were settled at the same time, Monroe only awaited a favorable opportunity in order to present the matter to the attention of the French government.[87] A little diplomatic incident soon afforded him an excellent opening for this purpose. Two letters from Gardoqui, the Spanish minister, asked Monroe to procure for him passports into France that he might take certain baths. In view of his somewhat strained personal relations with Gardoqui, Monroe rightly concluded that this request was a mere blind in order to open communications between France and Spain. With his characteristic frankness in diplomatic intercourse, he submitted the correspondence to the French government, at the same time notifying Gardoqui of his action and referring him to the Committee of Public Safety.[88] The incident afforded Monroe the very opportunity for which he had waited. At once he submitted to the diplomatic members of the Committee of Public Safety a memorial showing the situation of the United States with respect to Spain. As a loan to France had already been suggested by the government of that country, he intimated that a very considerable sum might be obtained provided

[87] Monroe to Secretary of State, November 20, 1794, Writings of Monroe, 2, 117–24.

[88] Monroe to Committee of Public Safety, November 13, 1794, and to Don Diego de Gardoqui, undated, Writings of Monroe, 2, 109–12, 127.

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satisfactory assurances were given that the points in controversy between the United States and Spain would be considered in any negotiations for peace which the French might carry on at Madrid.[39] By this note Monroe had followed his instructions in at least calling the attention of France to the negotiations with Spain, and in trying to obtain her aid.

While pressing commercial claims upon France and trying to further the negotiations with Spain, Monroe did not neglect the interests of American citizens who had been subjected to unjust imprisonment. Among those aided was Thomas Paine, the erratic author of many pamphlets which had exerted great influence during the American Revolution. Coming to France, he had been elected a member of the National Convention. As he had incurred the enmity of Robespierre, he was among the unfortunates who suffered imprisonment without trial. Monroe received numerous epistles from Paine, many of them despairing in tone, describing the privations to which he had been subjected in the Luxembourg prison. Paine made the claim that as he had come merely to *aid* in establishing a government, and had not accepted office under what might be regarded as a *settled* foreign administration, he had not forfeited his American citizenship. Monroe accepted this view and finally procured the author's release. He even received Paine as an inmate of his own house,[40] but owing to Paine's bitter feeling toward Washington, the intimate relations which arose from this incident proved ultimately a source of much worry to Monroe.

Monroe also tried to render aid by suggesting remedies for the consular situation, which he found to be most unsatisfactory. Four out of the six consuls representing the United States in France were Frenchmen. These four men had all suffered arrest, but had been afterwards released. Owing to the numerous governmental restrictions upon commerce and to the unsettled conditions of the times, Monroe considered it highly important that the consuls should be men

[39] Writings of Monroe, 2, 124–27.
[40] Thos. Paine to Monroe, August 7, 1794, to October, 1794, Monroe Papers, 7, 907–21.

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capable of commanding the highest respect for the country they represented, and, therefore, he recommended that American citizens should be appointed in place of these Frenchmen.[41] The American government does not, however, appear to have paid any attention to this recommendation.

While laboring to conciliate France and to obtain the other objects of his mission, Monroe seems to have feared that the worst possible construction would continually be placed upon his actions by his political opponents. With this view he thought best to forestall any complaints from Gouverneur Morris by writing directly to the President of a little misunderstanding that he had had with the American ex-minister. Gouverneur Morris, it seems, had applied for a passport to travel in Switzerland. Since practically all of his French connections and friends (the émigrés) were in Switzerland, the Committee of Public Safety, who were suspicious of his intentions, did not wish to grant this permission. Finally Morris was compelled to accept the passport from his successor, Monroe, rather than from the Directory as he had wished.[42] This little incident well illustrates the difficulties under which Monroe labored as the successor to a minister whom he knew to be more in favor at home than himself.

A rather indiscreet act about the same time subjected Monroe to much criticism later. As the Convention had decreed to hang together in their hall the American and the French flag, he sent them one of the former.[43] For six months Monroe failed to mention this incident to the home government. This omission is hardly so significant as some critics claim. Monroe might easily have forgotten to write of the incident before, and he finally wrote only casually.[44] There

[41] Monroe to Secretary of State, October 16, 1794, Writings of Monroe, 2, 69–87.
[42] Monroe to the President, November 19, 1794, Writings of Monroe, 2, 112–14.
[43] Monroe to the President of the National Convention, September 9, 1794, Writings of Monroe, 2, 54–55.
[44] Monroe to Secretary of State, March 6, 1795, Writings of Monroe, 2, 229.

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is no evidence of intentional deception, and Monroe in other matters cannot be accused of lacking frankness. But here again the minister allowed himself to be ruled by his French sympathies rather than by good judgment. If the strict neutrality of the United States was to be preserved, such an overt act of sympathy and friendliness as the official gift of an American flag was inadvisable.

Despite the mistakes into which his ardent sympathy for France had led him, by January, 1795, Monroe had laid the foundations of an apparently successful embassy. He had succeeded in conciliating France and in restoring the old friendship for the United States. He had induced the French government to recall the obnoxious decrees against American commerce, and had at least called the attention of France to the negotiations with Spain which were so important for the peace of the western country. Moreover, he had endeavored to promote the interests in France of the United States and its inhabitants. John Quincy Adams, a most conservative critic and a political opponent, testified to the gradual renewal of a friendly disposition after Monroe's arrival, to the final establishment of the principal stipulations of the treaty with France, and to the hopes of obtaining redress for antecedent causes of complaint.[45] As Adams was at this time the American representative in Holland, his testimony is of special value.

Until the news of the Jay treaty brought new complications, Monroe had, therefore, every reason to expect a happy result of the several negotiations which he had so auspiciously begun.

[45] John Q. Adams to Monroe, February 23, 1795, Monroe Papers, 7, 938.

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SECOND PERIOD.

From the Receipt by the French Government of Definite News of the Jay Treaty to its Ratification by the President, January 5–August 19, 1795.

The first complaint by the French government in regard to the treaty with Great Britain marked a new and most difficult period of Monroe's mission. Its former suspicions of Jay's real powers having been confirmed, the French government was still further irritated by the continued secrecy as to the contents of the treaty. Consequently, Monroe, besides trying to obtain the objects of his mission, was put upon the defensive in order to retain the former friendly relations of France toward the United States. The French government officially announced its knowledge of the Jay treaty on January 5, 1795. Over a month before that date Jay had written to Monroe from London that a treaty had been signed between the United States and Great Britain. As none of its provisions could be construed as infringing upon the existing treaty between the United States and France, Jay wrote that he did not consider that this fact should create any uneasiness in the French Convention.[1] Again, on November 25, Jay wrote that, as the treaty had not been ratified, he considered that it would be improper to publish it.[2] In a further note of November 28 Jay promised to communicate it to Monroe *confidentially*. Meantime he explicitly said that it contained nothing repugnant to the engagements of the United States with any other nation.[3]

In these repeated assurances that the treaty contained nothing to cause alarm to France, Jay had apparently done everything in his power to aid Monroe in explaining the matter to the French government. Also, in promising to

[1] John Jay to Monroe, November 24, 1794, Monroe Papers, 7, 927.
[2] John Jay to Monroe, November 25, 1794, Monroe Papers, 7, 928.
[3] John Jay to Monroe, November 28, 1794, Monroe Papers, 7, 929.

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communicate its contents to Monroe confidentially, he was apparently taking altogether the proper course. The treaty had not been submitted to the American government, and no risk could be run of a review by a foreign power. The indiscretion that Monroe had already displayed at his reception before the French Convention afforded a sufficient justification of Jay's course. But Monroe had already been deceived in regard to the negotiation of a treaty with Great Britain, and had also been made the instrument of deceiving the French government. In the light of certain provisions of the Jay treaty it would seem that this course was to be continued. Monroe himself was suspicious and very anxious to learn the complete contents of the treaty. The news of the treaty had placed him in a most embarrassing position. When questioned by the French government, he had declared that he was not in correspondence with Jay, and that the object of the latter's mission was to secure indemnity for spoliations of American commerce and the fulfillment of the Peace Treaty.[4] Monroe having in this way revealed the extent of his knowledge, the deception practised upon him by the American government became very evident to France after definite news of the Jay treaty had been received. Monroe, too, seems to have realized that he had been deceived. In a letter to Madison he alleged that he had been appointed as the proper person to hold the friendship of France in order that Jay might the more readily prosecute his negotiations with Great Britain.[5] In a private letter to Randolph written the same day Monroe declared that, owing to suspicions of the United States, he had encountered a great reserve in France. At the same time he declared his belief that the President would stop any perfidious designs hatched between Jay and Pitt and that it was impossible to be allied simultaneously with France and England.[6] This last letter is most significant. It is almost

[4] Monroe to Secretary of State, December 2, 1794, Writings of Monroe, 2, 140–53.
[5] Monroe to James Madison, December 18, 1794, Writings of Monroe, 2, 153–54.
[6] Monroe to Secretary of State, December 18, 1794, Writings of Monroe, 2, 154–61.

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an appeal to the President to annul the treaty that Jay had contracted with England. Both letters show Monroe's strong distrust of Jay and his convictions of the necessity for a close alliance between the United States and France. With such sentiments Monroe might resort to questionable means to secure this end.

Although Monroe was sufficiently discreet to refrain from mentioning the British treaty to the French government, he did not wait long for an official communication upon the subject. In a brief note dated January 8, 1795, the Committee of Public Safety informed him that news from London announced the conclusion by Jay of a treaty infringing upon the one already existing between the United States and France. Monroe was asked to communicate the treaty as soon as possible as the only means of meeting the injurious reports that had arisen in regard to the American government.[7] In reply Monroe sent Jay's letter of November 25, and he also promised to impart the contents of the treaty as soon as he should learn them.[8] This last promise was indiscreet, for Monroe should have recognized that many circumstances might prevent the revelation to a foreign government of so important a document before it had been ratified. Such rash action on Monroe's part shows that Jay's fear that he would give the treaty to the French government was well founded. Convinced that he must communicate the treaty in order to pacify France, Monroe sent a special messenger, Purviance, to London to obtain the copy of the treaty which alone, in his opinion, would satisfy the French government. The reply of Jay, while expressing his regrets for any unauthorized account of the treaty in the English papers, denied the right of a foreign government to inspect treaties made by a free nation, such as the United States, especially when they might be altered in the future. Nor did he consider that he had the right to submit the treaty to the French government for any such

[7] Committee of Public Safety to Monroe, January 5, 1795, Despatches, 4, 173–74.

[8] Monroe to Committee of Public Safety, December 27, 1794, Writings of Monroe, 2, 162–3.

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inspection. France, he declared, had nothing to do with the treaty except in so far as it should conflict with any existing arrangement with the United States.[9] But Monroe could not take this view of the situation. Always suspicious, he wrote the Secretary of State, accusing Jay of a design to throw the blame upon him in case a disclosure produced any inconvenience. Monroe added that, while he did not accord the French government a right of inspection, he wished to satisfy them that the treaty did not infringe upon existing arrangements. He did not indicate to what lengths he considered that he was to go in order to secure this end. Monroe concluded his letter to the Secretary of State upon this subject with the recommendation that all the great national objects connected with France might be more easily secured by a frank and liberal rather than by a cool and reserved deportment.[10] In this incident Jay appears to have been in the right. Monroe's diplomatic naïveté had betrayed him into great indiscretion. Apparently his French sympathy had blinded him to the very patent fact that, if the United States wished to take its place as an independent nation, and not as a mere appanage of France, such requests as that of the French government to inspect the treaty before it had been ratified must be peremptorily refused.

Notwithstanding the lack of judgment that Monroe had already shown, Jay sent Colonel Trumbull, who was well acquainted with the contents of the treaty, to Paris in order to give Monroe the information he so greatly desired. Jay wisely stipulated that Monroe should receive the treaty in absolute confidence. This condition he emphasized most strongly.[11] But Monroe's promise to give the French government the contents of the Jay treaty as soon as he received it compelled him to refuse an offer which was made under a condition of secrecy. Unfortunately Colonel Trumbull's

[9] John Jay to Secretary of State, February 5, 1795, Despatches, 1, 32.

[10] Monroe to Secretary of State, March 14, 1795, Writings of Monroe, 2, 229–36.

[11] John Jay to Monroe, February 19, 1795, Despatches, 4, 237.

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presence in Paris had aroused suspicion that Monroe was not really ignorant of the provisions of the treaty and was, therefore, playing a double part. To dispel this illusion, Monroe felt compelled, in self-defense, to give Jay's reasons for withholding the treaty. Accordingly, he showed his correspondence with the latter to the Committee of Safety.[12] This was undoubtedly a great mistake and one likely to range Monroe with the French government as the aggrieved party in opposition to Jay and, consequently, to the government of the United States. As France wished, of course, to hold the United States in a position rather of tutelage, the Committee of Public Safety deemed Jay's reasons for withholding the treaty insufficient, provided it contained nothing injurious to France.

Having found that the treaty could not be given to Monroe without danger of being submitted to the French government, Jay contrived to impart indirectly such information as he deemed proper. After the Trumbull incident Monroe was greatly surprised to receive a note from Benjamin Hichborn, a native of Massachusetts then in Paris. In general terms he was assured that by the Jay treaty certain rights had been secured, that all controversies relating to boundary lines and the western posts had been settled, and that compensation had been provided for those citizens of either nation who had suffered loss. The note denied any condition for mutual aid or for reciprocity beyond a general peace. Monroe was left free to use as he saw fit the meager information so hesitatingly vouchsafed. He accordingly forwarded a copy of the note to the Committee of Public Safety, but received no answer.[13] This note from Hichborn is most important, inspired as it doubtless was by Jay, and showing to just what extent it was considered safe to enlighten Monroe and, incidentally, the French government as to the provisions of the treaty. In this slender

[12] Monroe to Secretary of State, April 14, 1795, Writings of Monroe, 2, 238–55.

[13] Monroe to Secretary of State, April 14, 1795, Writings of Monroe, 2, 238–55. Benjamin Hichborn to Monroe, March 31, 1795, Despatches, 4, 238–39.

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communication no mention was made of the specific arrangements for the West Indian trade or of the agreement in regard to contraband, the two provisions against which the French government afterward so vigorously protested as violations of the treaty of 1778. The administration upheld Jay's policy of the utmost secrecy.[14] In writing to Monroe, Randolph emphasized this course, and supported in every particular the position that Jay had taken. Denying in the same strain the right of the French government to inspect the treaty, he asserted that, from a cursory perusal, he himself had not seen any ground for dissatisfaction on the part of the French Republic. He intimated, however, that the ratification of the treaty was not at all sure.[15] Yet Randolph was aware that the stipulations as to the West Indian trade and contraband afforded France most reasonable grounds for protest. A month after his first letter Randolph assured Monroe that the Jay treaty contained nothing offensive to France and that the secrecy observed arose merely from the usage in such cases.[16] In view of the concealment that had already been practised upon Monroe, these letters strengthen the conclusion that the administration was determined to deceive France as to the contents of the treaty until after it had been ratified. Monroe having proved indiscreet, it was doubtless deemed inadvisable to give him the treaty. His promise to reveal the contents to France had been most rash, but it had probably afforded Jay the very excuse he wished in order to refuse to give Monroe a copy of the treaty, while appearing to treat him with perfect fairness. Knowing Monroe as he did, Jay must have been aware that he would refuse to receive the treaty in secrecy after his promise to the French government.

Despite the executive caution, the contents of the treaty soon leaked out, for Madison wrote to Monroe, March 26,

[14] Secretary of State to John Jay, March 8, 1795, Instructions, 2, 327–29.
[15] Secretary of State to Monroe, March 7, 1795, American State Papers, 1, 699–700.
[16] Secretary of State to Monroe, April 7, 1795, American State Papers, 1, 701.

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1795, giving the chief points of the Jay treaty, but averring that he had no official knowledge and had obtained his information chiefly by conjecture, or at most from newspapers.[17] Monroe, needless to say, did not use such information as the basis for a communication to the French government. The Secretary of State wrote Monroe on July 2, 1795, that, as he had doubtless long before learned the particulars of the treaty from Pinckney and Trumbull, he would send only a copy with the vote of the Senate. The President, he declared, had not yet decided whether to promulgate the treaty. By some inadvertence the copy seems to have been left out of this letter, but was finally enclosed to Monroe in one of July 14, 1795.[18]

Meanwhile the long continued secrecy had almost exhausted the patience of the French government. Already confirmed in their suspicions that the Jay mission was not altogether as it was represented, this secrecy increased their distrust. Monroe too, the American minister, had been deceived. Therefore the administration might dupe him again as to the contents of the treaty. Consequently, his engagements might not prove binding, and he could not expect quite the same respect. Had the French government not regarded him as the representative of the American people, as distinguished from the government, Monroe would have probably failed altogether. As it was, he found great difficulty in prosecuting the objects of his mission while the secrecy in regard to the Jay treaty acted as a continual irritant upon the French government.

While trying to avoid any open rupture with France, Monroe continued to press the other objects of his mission, devoting much time to the claims of the United States against Spain. In a memorial addressed to the Committee of Public Safety Monroe presented the situation of the Mississippi Valley and the dependence of a large part of the United States upon free navigation of the river as almost

[17] Madison to Monroe, March 26, 1795, Writings of Monroe, 2, 154–56.

[18] Secretary of State to Monroe, July 2 and 14, 1795, Instructions, 3, 7–10.

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the sole means of commercial intercourse. Doubtless in order to soothe the irritation caused by the Jay treaty, he also showed that the retention by England of the western posts was a source of continual menace to the United States and, consequently, to their ally, France.[19] The Committee of Public Safety merely acknowledged Monroe's communication, expressing its appreciation of this token of American loyalty and friendship.[20] But later, Merlin, in charge of diplomatic affairs, definitely promised that the observations in regard to the Mississippi River should receive due attention. He added, most significantly, that the course of France in this matter would depend greatly upon the conduct of the American government relative to the Jay treaty. M. Merlin concluded with the observation that between nations, as between individuals, there should be reciprocity of obligation and service. He was careful to point out that he had written the note as an individual, and not in an official capacity.[21]

Monroe was soon enabled to confer a favor upon the French government. His action in the Gardoqui incident had proved successful, and in February he was asked to transmit to Spain two notes, which marked the opening of negotiations between France and Spain.[22] This diplomatic incident afforded Monroe another opportunity to bespeak French aid for the American claims against Spain. Again, on March 3, 1795, he wrote to the Committee of Public Safety recalling to them, in the midst of their negotiations with Spain, the demands of the United States: (1) for the free navigation of the Mississippi River and for the full territorial limits guaranteed by the Peace Treaty of 1783; (2) for freedom for American ships at New Orleans or at

[19] Monroe to Committee of Public Safety, January 25, 1795, Writings of Monroe, 2, 182–86.

[20] Committee of Public Safety to Monroe, February 8, 1795, American State Papers, 1, 699.

[21] Merlin to Fulwar Skipwith, February 21, 1795, Despatches, 4, 215.

[22] Monroe to Committee of Public Safety, February 17, 1795, Writings of Monroe, 2, 206.

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some other equally convenient Spanish port.[23] The messenger who handed this note to M. Pelet of the French diplomatic committee assured him that the free navigation of the Mississippi River would be of little real benefit unless a port was granted also or while Spain held West Florida as far north as the thirty-first parallel. As a result of these representations, M. Pelet promised that, in case of a negotiation with Spain, the interests of the United States would not be forgotten, and that France would render every good office in her power.[24] After having been told that the Jay treaty contained nothing which should cause uneasiness in the French government, M. Pelet had already advised Monroe of the instructions to the French agent then in Spain to use his utmost efforts to secure for the United States the points in controversy.[25]

This evident desire to aid the United States in the Spanish matter shows to what extent Monroe had succeeded in conciliating the French government. But the continued secrecy of the Jay treaty had its effect, and the ardent friendship of France for the United States soon began to cool. Two incidents showed unmistakably to what extent this was true. In notifying the Committee of Public Safety of the journey through France of Mr. Pinckney, the newly appointed American minister at Madrid, Monroe had offered to send by him any official messages to Spain that the French government might wish to transmit. In contrast to the former alacrity with which France had availed herself of Monroe as a medium of communication with Spain, this offer was refused.[26] Also, William Short, then in charge of the Spanish affair, wrote early in May that Spain was most anxious for an accommodation with the United States. By the desire of the Premier he asked also that Monroe should propose to France to open active mediation with Spain. But this re-

[23] Monroe to Committee of Public Safety, March 8, 1795, Despatches, 4, 213.
[24] J. C. Montflorence to Monroe, March 9, 1795, Despatches, 4, 213–14.
[25] Monroe to Secretary of State, March 6, 1795, Writings of Monroe, 2, 217–19.
[26] Monroe to Committee of Public Safety, May 22, 1795, Writings of Monroe, 2, 284–85.

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quest could not be granted, for, owing to the growing distrust aroused by the Jay treaty, France now refused to accept the United States as a mediator.[27] From this changed attitude Monroe supposed that no further help might be expected. Just how far the Spanish protestations of anxiety for an accommodation with the United States were true, was uncertain. From the previous experience of the negotiators, it was probable that only outside pressure would ever bring anything more definite than protestations from the Spanish government.

While France had been promising Monroe to aid in the American negotiations with Spain, she herself was endeavoring to obtain the restitution of Louisiana. The instructions to the French agent at Madrid charged him above all to make Louisiana the chief object of his mission.[28] In fact, a secret article of the treaty negotiated between France and Spain at this time provided for such a restitution.[29] In spite of this secret purpose France favored the American negotiations for the free navigation of the Mississippi River. Fearing greatly an alliance between the United States and Great Britain, the policy of France was to diminish the British influence in America as much as possible. As one of the chief means of accomplishing this object, Fauchet had advised his home government to push the claims of the United States to the use of the Mississippi.[30] After the negotiation of the treaty between the United States and Spain, which conferred this right, the French government expressed its entire approval, although instructing its minister at Madrid to resist the extension of this privilege to British citizens.[31]

[27] Wm. Short to Monroe, May 4, 1795, American State Papers, I, 716. Monroe to Wm. Short, May 30, 1795, Writings of Monroe, 2, 288–92.

[28] Instructions to Barthelemy, 1795, Henry Adams Collection, Fauchet, 1794.

[29] Secret Article 7, June 27, 1796, Henry Adams Collection, Adet, 1795–97.

[30] Fauchet to Commissioners of Foreign Relations, September 16, 1794, American Historical Association Report, 1903, II, 420–24.

[31] Instructions to General Perignon, December 31, 1795, Henry Adams Collection, Adet, 1795–97.

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With this proof of the disposition of France in the matter, there is no good reason to doubt the sincerity of the statement of M. Pelet that the French agent had been instructed to bring pressure to bear upon Spain to grant the American claims. Certainly the conciliatory attitude with which Pinckney was met, so different from that manifested toward Carmichael and Short, was not due to the aid of Great Britain, whose policy it was to prevent an alliance between Spain and the United States.[32] The entire course of the negotiations showed the influence of France. Upon his arrival Pinckney found a most favorable disposition to conclude speedily a treaty with the United States. Indeed, the Spanish minister declared that the King was willing to sacrifice a part of his rights as a testimonial of his good will. At the first conference with Pinckney the Premier proposed that, as the American and the French negotiations were so intimately connected, they should proceed together. Though this offer was not accepted, Pinckney wrote home that the progress of the American negotiations with Spain could not have been upon a better footing. This favorable disposition Pinckney himself ascribed to the work of the French commissioners, who had evidently fulfilled the promises to Monroe that France would insist upon a settlement. As a proof of the influence of Monroe's attitude, the Spanish Premier informed Pinckney that the American minister at Paris opposed any accommodation between France and Spain which did not acknowledge the interests of the United States by a guarantee of the free navigation of the Mississippi.[33]

With the way thus paved, on October 27, 1795, Pinckney concluded the treaty which guaranteed to American citizens the navigation of the Mississippi River and the use of New Orleans for three years as a free port for the storage of their goods. This treaty also established the boundaries of the United States as agreed upon with Great Britain in the Peace Treaty of 1783. The importance of Monroe's work

[32] Despatches to Bond, October 10, 1795, Henry Adams Collection, Bond, 1795–96.

[33] Thos. Pinckney to Secretary of State, July 21, 1795, American State Papers, 1, 534–35.

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in bringing about this final adjustment is readily apparent.

In accordance with his instructions, Monroe also endeavored to secure the aid of France for the successful termination of the negotiations for a treaty with Algiers. The Algerine pirates had violently attacked American commerce in the Mediterranean, imprisoning and enslaving many seamen, so that Congress finally took steps to terminate such a condition of affairs. Admiral John Paul Jones was appointed in 1792 to negotiate a treaty with the Dey of Algiers.[84] The untimely death of Admiral Jones stopped all proceedings until the appointment of Colonel David Humphreys in 1793 as his successor.[85] Humphreys had accomplished practically nothing when Monroe arrived on the Continent. A few months later Monroe notified Humphreys that he would do everything possible to aid if only he were informed of what was needed. As France, in Monroe's opinion, was then the most influential of the Continental powers with the Barbary pirates, this aid was of paramount importance to ensure success.[86] Nevertheless, Colonel Humphreys, then stationed at Lisbon, seems to have been very loath to communicate with Monroe, though willing to take his aid when it was needed. The Secretary of State, however, recognized the importance of the aid which Monroe might give, and he urged upon Humphreys the necessity of coöperating with him.[87] Even after the receipt of this note, Colonel Humphreys seems to have communicated with Monroe only when absolutely necessary. Kept thus almost wholly in ignorance of the course of these important negotiations, Monroe found it very difficult to render effective aid.[88] Before the news of the Jay treaty, Monroe had reason to believe that the French government had fully

[84] Thos. Jefferson to John Paul Jones, June 1, 1792, American State Papers, 1, 290–92.

[85] Thos. Jefferson to Col. David Humphreys, March 21, 1793, American State Papers, 1, 294.

[86] Monroe to Col. David Humphreys, November 11, 1794, Writings of Monroe, 2, 109.

[87] Edmund Randolph to Col. D. Humphreys, April 4, 1795, Instructions, 2, 340–41.

[88] Monroe to Secretary of State, February 1, 1795, Writings of Monroe, 2, 186–93.

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decided to provide a settlement of the American difficulties with Algiers.[39] In fact a member of the Diplomatic Committee had already offered aid, and Monroe would have undertaken the task very early in his mission except for fear of interfering with Humphreys. Notwithstanding the treatment he had received in the matter, Monroe was ever ready to fulfill his duty, and on July 5, 1795, even after the French friendship for America had perceptibly cooled, he gave notice to that government of the presence of Humphreys at Lisbon with full powers to treat with the Barbary States, at the same time bespeaking French aid for the negotiations.[40]

Somewhat connected with the Algerine negotiations was a rather interesting incident which illustrates the great ignorance then prevalent in Europe as to the real powers and the nature of the American government. The chargé d'affaires of Malta proposed to Monroe that, in return for the protection and privileges of Malta for American seamen, the government of the United States should grant the Knights of Malta a large area of land in America. To this rather astounding proposal Monroe replied that he had transmitted the note to the American government and could, therefore, make no definite answer. He notified the chargé d'affaires, however, that no land could be absolutely given away by the American executive, since the government of all the western land must continually remain elective and republican.[41] No further attention seems to have been paid to the proposal.

The indifference with which the home government treated Monroe's recommendations was felt especially in the consular situation. The appointment as consuls to France of persons unacceptable to the French government, without any previous consultation with Monroe, caused him much embarrassment. He asked the removal of Pitcairn, an English

[39] Monroe to Secretary of State, February 12, 1795, Writings of Monroe, 2, 193–206.

[40] Monroe to Committee of Public Safety, July 5, 1795, Writings of Monroe, 2, 315–17.

[41] Chargé d'Affaires of Malta to Monroe, undated; Monroe to Chargé d'Affaires, November 22, 1794, Writings of Monroe, 2, 128–30.

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subject who had been appointed consul at Paris, alleging that he would not be received by the French government, and that such a condition of affairs would be most detrimental to American business interests.[42] After Pitcairn's arrival, Monroe again complained of the appointment. He withheld the consul's credentials until he should receive further instructions from the home government.[43] Much trouble resulted from this official indifference to the appointment of consuls. Contrary to French law, they frequently gave passes to Englishmen who pretended to be Americans merely to obtain the privileges enjoyed by the latter in France. Upon the complaint of the French government Monroe issued a circular designed to stop this evil by enjoining upon the American consuls the utmost care in making out passports. All doubtful cases were to be submitted to Monroe's personal decision.[44] The trouble continued, however, until the Commission of Foreign Affairs asked for a list every ten days of the Americans in Paris. Monroe, of course, complied.[45] He complained to the Secretary of State that all this trouble was due to the numerous Englishmen who had obtained passports under false pretenses.[46]

France also began to complain that certain Americans kept up intercourse with England. Monroe was, therefore, asked to have the consuls give a register of each captain and to prevent any seamen from landing from any American ship until the list had been approved by the French government. This last request he was unwilling to grant unless such a regulation fell equally upon the vessels of all neutral nations.[47]

[42] Monroe to Secretary of State, March 6, 1795, Writings of Monroe, 2, 217–19.
[43] Monroe to Secretary of State, May 17, 1795, Writings of Monroe, 2, 254–64.
[44] Committee of Foreign Affairs to Monroe, and Monroe's reply, June 10 and 19, 1795, Despatches, 4, 285–88.
[45] Committee of Foreign Affairs to Monroe, and Monroe's reply, June 24–27, 1795, Despatches, 4, 289–90.
[46] Monroe to Secretary of State, July 6, 1795, Writings of Monroe, 2, 317–39.
[47] Monroe to Commissary of Marine, August 30, 1795, Writings of Monroe, 2, 343–46.

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The appointment of Parish, a British subject, as American consul at Hamburg provoked trouble. This consul was charged with acting as a British agent, the Prussian subsidy, it was alleged, actually passing through his hands. As the trade of Hamburg was of the utmost importance, Monroe suggested that he be replaced by Joel Barlow or William St. John.[48] This gentle hint was disregarded. In December the French government actually asked for the removal of Parish, alleging that he had acted altogether as the British agent. In transmitting this request, Monroe added that from other sources he had learned that Parish had given British emigrants the protection of the flag of the United States by putting them on American ships. He again suggested the appointment of an American citizen to the responsible post of Hamburg.[49] Finally the President decided to replace Parish,[50] but so little attention was paid to the matter by the American authorities that a second note from the French government, sharp and peremptory in tone, gave warning that no passports issued by Parish would be honored in France.[51] The long delay shown in this removal, as well as in other consular difficulties, greatly hindered Monroe in his work of conciliation.

While attending to the duties of his office, Monroe attempted to answer the criticism to which he felt that he had been unjustly subjected. In reply to scathing strictures from Randolph upon his reception in France he asserted that the sentiments he had expressed in the Convention did not exceed those of his instructions. He considered that, in the condition of affairs upon his arrival in France, his course had been necessary. Understanding that the object of the Jay mission was to obtain compensation for injuries and the

[48] Monroe to Secretary of State, July 6, 1795, Writings of Monroe, 2, 317–30.

[49] Monroe to Secretary of State, December 22, 1795, Writings of Monroe, 2, 427–32; Minister of Foreign Affairs to Monroe, December 4, 1795, and Monroe's reply, December 9, 1795, Despatches, 4, 346–48.

[50] Timothy Pickering to Monroe, June 13, 1796, American State Papers, 1, 737–38; Writings of Monroe, 2, 435–36.

[51] Minister of Foreign Affairs to Monroe, October 8, 1796, Despatches, 4, 429.

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surrender of the western posts, he had supposed that a good understanding between France and the United States would only forward these negotiations. Monroe emphasized the need for a close alliance between the two republics, especially as the disposition of France to aid the United States had only been checked, not changed, by the news of the Jay treaty.[52] This last statement the conduct of the French government had shown to be true. The entire letter of defense is straightforward in tone, yet unconsciously Monroe displayed his predilection for France, a sentiment which was at the root of all his indiscretions. A few days later Monroe wrote Madison that he had been much hurt by the criticism of Randolph. As he had not been aware that the papers presented to the Convention were to be kept secret, he had deemed it best, as the state of parties in the United States was well known, to let the official resolutions speak for themselves.[53] An inference might be drawn from this letter that, in so publicly announcing the resolutions of Congress, Monroe had purposely attempted to force the pro-British party to a closer alliance with France, or else to a decided avowal of its real policy. Although such a course was contrary to Monroe's usual frank nature, he would doubtless have justified himself by his intense desire for and belief in the necessity for united action with France. Such action, though contrary to modern diplomatic usage, would probably not have been opposed to the ethics of American politics at that period. But no definite conclusion can be drawn from the letter.

Monroe's somewhat ruffled feelings were considerably mollified by the receipt of a milder and more conciliatory letter from the Secretary of State dated December 5. Doubtless Randolph felt that his former strictures had shown too plainly the real feeling of the government toward Monroe, and that there was danger that he would not continue

[52] Monroe to Secretary of State, February 12, 1795, Writings of Monroe, 2, 193–206.
[53] Monroe to Madison, February 18, 1795, Writings of Monroe, 2, 206–12.

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at his post unless he were accorded better usage.[54] With the criticism of his conduct by the Secretary of State the element of discord arising from Monroe's position as a leader among the Anti-Federalists made itself felt. As the disfavor of the administration became evident, Monroe naturally turned to his friends at home, justifying his conduct, and even committing the indiscretion of criticising the policy of the government in letters which, he must have known, were widely circulated among its opponents. To Jefferson, Monroe clearly stated his position on the Jay treaty. If it contained nothing objectionable, he believed that the standing of the United States with France would not be injured. If, however, the treaty proved to be a bad one, and contained any clause which might be justly censured, he felt sure that the French government would reproach the American administration. In this latter event, he firmly believed that, since a good understanding had already existed between the United States and France, an excellent opportunity had been thrown away to dictate to England what terms the former pleased. Concluding, Monroe expressed his firm belief that the United States should stand allied with France, which he considered a rapidly rising power.[55] On this date, in a confidential note to George Logan, Aaron Burr, Thomas Beckley, and other prominent opponents of the administration, Monroe expressed his distrust of Great Britain in view of the new depredations upon American shipping. The superiority of the French Republic, he argued, had now compelled the governments of Europe to sue for peace, despite their fear of the spread of revolutionary ideas. Upon every principle, therefore, Monroe believed that America should in no degree lose the former esteem of France.[56] This last letter was termed confidential, but a part which

[54] Monroe to Secretary of State, February 18, 1795, Writings of Monroe, 2, 212–13.

[55] Monroe to Thos. Jefferson, June 23, 1795, Writings of Monroe, 2, 292–304.

[56] Monroe to Geo. Logan, Aaron Burr, Thos. Beckley, Robert R. Livingston, and Jno. Beckley, June 23, 1795, Monroe Papers, 1, 6.

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was printed in the American gazettes aided in arousing sympathy for France in the United States.[57]

In expressing so plainly his opinion Monroe was at fault. His utterances, though supposedly private, furnished campaign material for the opposition, and were often inserted in the public press. He put himself in the position of openly supporting the policy of the administration by continuing in its service, and of privately not hesitating to express his decided disapproval of its acts. Indeed, he had gone so far as to inculcate a policy in opposition to that of the executive. A slight palliation of this conduct may be found in the fact that the President had full knowledge of Monroe's position toward France and toward the Jay treaty when he appointed him. The deception practised upon Monroe as to Jay's real powers naturally threw him into the arms of the opposition. Yet nothing can effectually excuse the indiscretion into which Monroe's warm sympathies for France had betrayed him in these letters.

Meanwhile, in numerous letters from friends at home Monroe learned of the strong opposition which the Jay treaty had evoked in the United States. John Langdon, Henry Tazewell, and Stevens Thomson Mason informed him in June of their opposition to the treaty and of the popular discontent which the secrecy of the Senate proceedings had aroused.[58] Madison declared that Virginia and North Carolina were solid in their opposition to the Jay treaty. After its passage by the Senate Aaron Burr wrote that it had aroused much dissatisfaction, even among the merchants who had favored its author. Burr added that memorials were being circulated in opposition to the treaty, and that the President's action was uncertain.[59] Robert R. Livingston also wrote of the execrations with which the treaty had been received in the United States. A most significant passage in this letter expressed the fear that the treaty

[57] Aaron Burr to Monroe, December 24, 1795, Monroe Papers, 8, 974.

[58] Jno. Langdon, Henry Tazewell, and Stevens Thomson Mason to Monroe, June 24, 27, and 29, 1795, Monroe Papers, 8, 950–52.

[59] Aaron Burr to Monroe, July 15, 1795, Monroe Papers, 8, 954.

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might render Monroe's situation most disagreeable, and declared that the French government should discriminate between the attitude of the American nation and that of the administration. Apparently this was a hint that Monroe should range himself as the representative of the party favoring France, rather than as the American minister. Certainly Livingston was well acquainted with the sentiments of Monroe upon the subject. Washington, Livingston hoped, would be affected by the universal opinion. The toasts on the Fourth of July had well voiced, in Livingston's estimation, the sentiments of the American people in this regard, and he said that he and Madison had written to the President upon the subject.[60] These letters show the close connection which Monroe maintained with friends in America who were the bitter opponents of the administration. The letter from Livingston would imply that Monroe was regarded as the spokesman in France of the sentiment of the American people, in distinction to that of the government, in favor of a close alliance with France.

Assured of such a determined opposition to the Jay treaty, it was but natural that Monroe should have done his utmost to oppose it, and should have continued to express to his friends his opposition to its provisions.

Writing to Madison, he declared that, if the objectionable twelfth article was carried out, no American vessel could cross the ocean without submitting to a British search. The treaty he did not hesitate to regard as fully expressive of the pro-British views of the author, Jay, views which, Monroe rather pointedly intimated, should be kept in abeyance. Monroe thought that negotiations with England and with France should go hand in hand. Besides this rather new method of diplomatic frankness, he went farther, and advocated the seizure of the Bermudas and of the western posts, perhaps even of Canada, hoping by this drastic means to force Great Britain into making an equitable peace. Monroe concluded this letter, so expressive of his sentiments

[60] R. R. Livingston to Monroe, July 10, 1795, Monroe Papers, 8, 956.

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toward Great Britain, with the observation that if the President, separating himself completely from the advocates of the Jay treaty, would adopt measures of this kind, everything might be retrieved.[61] Monroe probably overlooked the fact that the policy he proposed would precipitate the very war which the President was trying so strenuously to avoid.

In another letter to Madison, in enclosing copies of his correspondence with Jay and Randolph, Monroe expressed himself very strongly in regard to the duplicity and finesse of Jay in plotting to sacrifice his (Monroe's) reputation in order to save his own. This is evidently an allusion to Jay's offer to communicate the treaty privately and confidentially. Monroe declared that he himself had all the while tried to act for the best without compromising himself in regard to what Jay had done. If the treaty was ratified, he feared that the United States would be ranked with the European coalition, and so would probably incur the resentment of the French nation.[62] Monroe had undoubtedly committed a grave offense in sending to Madison this correspondence with Jay and Randolph. In his official capacity as minister to France, these communications should have been held sacred. This was a much more serious offense than that of criticising the policy of the government, and little can be said in extenuation, except that Monroe, feeling himself ill-treated by the government and placed in a most embarrassing position, adopted this method of justifying his conduct.

Monroe's complaints to his friends find a partial justification in the scanty official communications with which the American administration favored him during this most critical period. Evidently hoping to smooth over the minister's ruffled feeling, and to show his kindly disposition, Washington himself wrote in the early part of June that the Department of State would keep him informed of cur-

[61] Monroe to Madison, September 8, 1795, Writings of Monroe, 2, 547–59.

[62] Monroe to Madison, October 24, 1795, Writings of Monroe, 2, 401–7.

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rent events.[63] This note was probably elicited by Monroe's complaint on the score of the Algerian negotiations. Whatever may have been the intention of the President, the promise was not carried out by the Secretary of State.

Monroe's continued complaint of the Jay treaty finally elicited a reply from the Secretary of State, which, as giving the official view of the American administration, forms a most important document. Speaking in his official capacity, Randolph examines the conduct of the United States since the beginning of the war between Great Britain and France, and shows that the American government had apparently preserved a strict neutrality. Regarding the alleged deceiving of Monroe and of the French minister as to Jay's real powers the defense is very weak. Randolph practically admits that the explanations given to the French minister and in Monroe's instructions had *implied* that the President had not given Jay the powers to conclude a commercial treaty. He contends that the United States had a perfect right to conceal part of Jay's powers, and that Monroe's instructions were *literally* true, inasmuch as the motives of the Jay mission were to stop vexations of American commerce and to obtain the surrender of the western posts. The rest of the defense consists of a tedious argument, and one rather extraneous to the question at issue, denying the right of a foreign government to demand the motives of the United States. Randolph adds that the Jay treaty interfered with no treaty rights guaranteed by the agreement between France and the United States. By such arguments Randolph begs the question. In this defense he makes no attempt to deny, not only that Jay's powers to conclude a commercial treaty had been concealed from Monroe and the French minister, but also that his statement to them had implied the non-existence of any such power. The charge of intentional deception on the part of the administration is, therefore, proved by the Secretary of State's own words.[64]

[63] Washington to Monroe, June 5, 1795, Monroe Papers, 7, 947.
[64] Secretary of State to Monroe, June 1, 1795, American State Papers, 1, 705–12.

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The above defense may be compared with a sworn declaration in regard to the matter which Randolph later sent to Monroe. In most vehement language Randolph declares that he could never with truth have informed the French minister that the Jay mission, as set forth in the President's message, contemplated only an adjustment of complaints, if by this term was signified an exclusion of commercial arrangements. Continuing, Randolph asserts that, in the only official communication with M. Fauchet upon this subject which he recollected, he had informed him, with the President's permission, that Jay was instructed not to weaken the engagements of the United States with France. Also in this sworn statement Randolph denies that then or at any other time in official or unofficial conversation he had ever said that nothing of a commercial nature was contemplated, or that only the controversies arising under the old treaty and the spoliations were to be adjusted. In answer to the charge of Fauchet that he had understood from what Randolph said that Jay was not authorized to treat of commercial matters, the statement laconically declares that the French minister had misunderstood.[65] As if this denial was not enough, after Fauchet's departure Randolph again wrote to Monroe, vehemently denying the French minister's statement that he had been told that a treaty of commerce was not part of the Jay mission.[66]

If these two letters be placed beside the defense written to Monroe, the conclusion must be that Randolph had deceived the French minister as well as Monroe in regard to the full purport of the Jay mission. This very fact, which is practically admitted and defended in the first letter, Randolph tries to deny in these last two statements. Randolph had not specifically informed either Monroe or Fauchet that the negotiation of a commercial treaty did not form a distinct part of Jay's real powers, and to this extent his two latter letters are true; but he had told only a part of the truth, and, as he himself admits, he had intentionally con-

[65] Declaration of Edmund Randolph, July 8, 1795, Instructions, 3, 21–22.

[66] Randolph to Monroe, July 21, 1795, Instructions, 3, 13–15.

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cealed the rest by implication. The duplicity practised upon both Monroe and the French minister is therefore conclusively proved by Randolph's own statement. It is a most significant fact that, when Congress called for the correspondence relative to the Monroe mission, these two letters, showing clearly the deception that had been practised, were suppressed. The very fact that they were not published serves as an additional proof that the government, aware of the damaging evidence which they presented, was unwilling to have them put before the nation.

In addition to Randolph's own testimony, there is further evidence to show that Monroe as well as the French minister, Fauchet, had been deceived as to Jay's real powers. Thomas Pinckney, who as minister to Great Britain had been entrusted with the full secret, wrote to Washington early in 1795 that by a letter from Monroe he had learned that the latter understood he was instructed to say to the French government that Jay had no power to treat on commerce. Knowing this to be a mistake, Pinckney wrote to the President in order that the matter might be cleared up.[67] Doubtless this letter to Washington, who would tolerate no duplicity, was the cause of Randolph's vehement declarations on the subject. If so, it clears Washington of all blame for the double-dealing of the Secretary of State. At the same time, it shows the sincerity of Monroe's interpretation of what the Secretary of State had vouchsafed to reveal to him of Jay's instructions. A letter from Fauchet to the Minister of Foreign Affairs shows that Randolph, in spite of his sworn statement to the contrary, had shown him part of Jay's instructions, implying only that the object of the mission was to treat of American rights of neutrality and to claim indemnity for spoliations.[68] This letter, it should be noted, was written before Fauchet had left America, and before any controversy on the subject had arisen. Yet, despite Randolph's assurances, Fauchet dis-

[67] Thos. Pinckney to Washington, February 25, 1795, Washington Papers, Vol. 81.

[68] Fauchet to Minister of Foreign Affairs, May 5, 1794, American Historical Association Report for 1903, 2, 330–34.

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trusted Jay and feared his designs.[69] The two letters from Pinckney and Fauchet strengthen the deduction, to be drawn from Randolph's own statements, that he had intentionally concealed Jay's real powers from both Monroe and the French minister in order to convince them that no treaty of commerce was contemplated.

Meanwhile, after the passage of the treaty by the Senate, the French government seems to have waited for the ratification by the President before making formal protest. Monroe's position as the duped and discredited minister of the United States was of course exceedingly difficult. Yet the administration knew that he was personally acceptable to France, and that he alone could restrain the rising tide of French indignation; therefore it was necessary to keep him pacified. Perhaps with this object in view, Randolph, in sending Monroe a copy of the Jay treaty, asserted his doubt as to its ratification by the President in view of the obstacles presented by the British orders for the seizure of provisions. This note, however, the Secretary wished to be regarded as private. A week later he wrote that the treaty was most unpopular in Philadelphia and Boston and that its ratification was still uncertain.[70] Whether Randolph was really sincere in these confidential disclosures or whether he merely wished to delude Monroe as to the outcome of the treaty is uncertain. In view of his previous conduct, it is possible that he intended only to keep Monroe in a complaisant humor in order to maintain the peace with France until the President had ratified the treaty.

Whatever the motives of Randolph in calling special attention to the doubt as to the final ratification of the treaty, Monroe from now on determined to abide strictly by the instructions of the government. He wrote Randolph on August 17 that, as the treaty was in the newspapers, it would doubtless soon be in the hands of the French government, yet he would do nothing in regard to the matter

[69] Fauchet to Commissioner on Foreign Relations, September 16, 1794, American Historical Association Report, 1903, 2, 420–24.

[70] Secretary of State to Monroe, July 14 and 21, 1795, American State Papers, 1, 719.

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without instructions. It was rumored, he averred, that the British government claimed that seizures might be made under the terms of the treaty. If this contention was borne out, he anticipated that the French government would have a just cause for complaint.[71] On another occasion, in urging the necessity of knowing, as soon as possible, the fate of the treaty, Monroe wrote that, from the delay in its receipt, he suspected that the Secretary's last letter to him had been opened by British spies. This incident illustrates the difficulty under which Monroe, in common with other American diplomats, labored, owing to frequent tampering with their letters by British agents.[72]

Meanwhile, though Monroe depended upon the home government for instructions as to how he might meet the anticipated complaints of the French government against the Jay treaty, official communications grew still more infrequent. After Randolph's resignation Timothy Pickering, a strong supporter of a pro-British policy, became Secretary of State. On September 12, and again on November 23, Pickering wrote roundly rebuking Monroe for the views that he had expressed in regard to the Jay treaty as quite foreign to those of the government of the United States. With the exception of these two censorious letters, which, it is important to note, while chiding Monroe for his past conduct, gave no guide for the future,[73] Monroe was left without official communications during the fall. Yet Monroe continued his conscientious efforts to keep the home government informed of what transpired in France. As late as October 20 he declared that nothing official had been said in regard to the treaty, and that, whatever should happen, he would do his best to inculcate and to continue a friendly feeling.[74] Even on December 6, 1795, Monroe wrote that, although

[71] Monroe to Secretary of State, August 17, 1795, Writings of Monroe, 2, 339–43.

[72] Monroe to Secretary of State, September 10, 1795, Writings of Monroe, 2, 359–66.

[73] Timothy Pickering to Monroe, September 12 and November 23, 1795, American State Papers, 1, 727.

[74] Monroe to Secretary of State, October 20, 1795, Writings of Monroe, 2, 379–401.

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symptoms of discontent over the treaty were apparent, the French government had not lately mentioned the extent of Jay's real powers.[75] With the news that the President had signed the treaty, the situation materially changed. The French government no longer doubted the outcome of the agreement, and prepared to make vigorous protests. The third and last period of Monroe's mission had begun.

Before considering the new phase in Monroe's mission to France caused by the President's final ratification of the Jay treaty, it may be well to summarize what had transpired since news of its probable existence had so rudely disturbed the growing friendship of the French Republic for the United States. Monroe, having been deceived as to Jay's real powers, had been placed in a most embarrassing position before the French government. The long silence as to its contents after the treaty had been negotiated increased the feeling of distrust. Monroe's quixotic promise to impart the contents of the treaty to the French government as soon as he himself received it perhaps justified the wisdom of such a course. Nevertheless, it only increased the embarrassments of the minister who was endeavoring to retain the friendship of France. The deceiving of both Monroe and the French minister in the first place, which was proved by Randolph's attempted defense, was at the root of the trouble, and the government cannot be acquitted of intentional duplicity in this instance. Probably the supporters of the pro-British policy were well aware that Monroe, had he known the whole truth as to Jay's mission, would never have accepted the appointment as minister to France. As he was necessary in order to keep the peace with France for the time, the only alternative was to deceive him.

While thus discredited and thrown into a very annoying situation, Monroe had won a signal triumph in procuring the French aid which had proved so efficacious in the final settlement with Spain of the troublesome Mississippi question. By a similar display of tact he had secured a promise

[75] Monroe to Secretary of State, December 6, 1795, Writings of Monroe, 2, 422–25.

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of aid in negotiating the treaty with Algiers. Nor had Monroe been indifferent to the needed consular reforms which vitally affected the well-being of American commerce. In all these negotiations, however, the American government had practically ignored his suggestions, and had treated him with studious indifference as far as was possible, never acknowledging the services that he actually performed.

Yet even the persistent snubbing which he received from the government did not justify Monroe's free expression of his sentiments in writing to his friends at home. To have written a letter which reflected on the administration so severely and which was publicly used by the opponents of the policies then in progress was most reprehensible. Nor should he have kept up so constant a correspondence with the opponents of the administration. Either he should have resigned his position, or at least have suppressed temporarily his private opinions. In sending copies of the correspondence with Jay and Randolph he committed a grave breach of trust.

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THIRD PERIOD.

From the Ratification of the Jay Treaty by the President to the End of the Monroe Mission, August 19, 1795–December 27, 1796.

After the news of the President's ratification of the Jay treaty reached Paris, Monroe found himself confronted with the difficult task of allaying the anger of the French Republic. On the other hand, the American administration at this crisis not only made no attempt to smooth over the ruffled feelings of the French government, but the indiscreet utterances of public officials greatly complicated the situation. Edmund Randolph, who had just been displaced as Secretary of State, brought out a pamphlet reflecting upon France, while certain allusions of the President in a speech before Congress were interpreted as a slight upon that republic. Combined with the distrust that had been engendered by the Jay treaty, these public utterances led the French government to propose much more serious measures than had been anticipated. Undertaking to push the claims for spoliations, Monroe was astounded to find that, according to the French official view, the ratification of the Jay treaty had annulled the treaty of alliance with the United States. Adet, he was informed, had been recalled, and a special envoy would be sent to remonstrate. No other reason for this very unusual conduct was given than that the Jay treaty had ranged the United States with the coalesced powers.[1] Almost dumfounded by such extraordinary news, Monroe at once asked for and received another audience. Dwelling upon the difficult position in which such a special mission would plunge both countries, he expressed fear lest this action might arouse other governments to carry on intrigues designed to separate still further France and the United States. The Minister of Foreign Affairs seemed

[1] A Vindication of Mr. Randolph's Resignation, E. J. Randolph, Philadelphia, 1795. Writings of Monroe, 3, 437.

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much impressed by this argument, admitting the strength of the last point especially. Monroe even hinted that such an extraordinary step might bring on war; certainly he could see no adequate gain that would come from it. So successful were these representations that the special mission was recalled, though Monroe was informed that strong sentiments in regard to the matter would be conveyed through the ordinary channel of representation.[2] It is a noticeable fact that Monroe, alone, without aid from the home government, averted an act which might have led to serious trouble. Yet he had made no indiscreet remarks, and had remained entirely loyal to the administration in his remonstrances. Nor, despite his private opinion, had Monroe acknowledged that the Jay treaty infringed in the slightest degree upon the agreement between the United States and France. In this instance Monroe fully maintained the dignity of the United States while inducing France to retract.

At this critical time Monroe was left almost without any official guide for conduct. A letter of January 7, 1796, one of the few communications from Pickering, the newly appointed Secretary of State, transmitted the resolutions of the House and Senate upon the presentation of the French colors, but merely declared that, in the opinion of the American government, the Jay treaty did not in the least infringe upon the one already existing with France.[3] Monroe was expected to keep the peace with the French government, and even to preserve a friendly relation, but was left with no official communication which would help to smooth over the difficulty by attesting the strong friendship of the United States for France. The French government must already have known that Monroe was in disfavor with the Federalists, and that he could make no promises or engagements that would be held as binding. That Monroe accomplished anything under these circumstances is a high tribute to his tact.

[2] Monroe to Secretary of State, February 20 and March 10, and to Jas. Madison, February 27, 1796, Writings of Monroe, 2, 456–66.

[3] Secretary of State to Monroe, January 7, 1796, Instructions, 3, 92–93.

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In accordance with his promise, the Minister of Foreign Affairs formulated on March 11, 1796, the complaints of the French government against the United States. This paper, showing the exact ground of the French protest, may be considered somewhat in detail.

First, the French complained of specific violations of the treaty. The United States, it was alleged, still took cognizance of French prizes which were brought into court. Additional grievances were found in the use of American ports by British privateers and in the non-fulfillment of the stipulations guaranteeing French citizens a trial by consul. The arrest of the captain of the frigate *Cassius* was likewise mentioned.

The arrest, while within American waters, of the French minister Fauchet by the British frigate *Africa* constituted the second count in this arraignment of the United States.

The third complaint, dealing with the Jay treaty, was the most important. The others were subsidiary and doubtless would not have been formulated but for this main cause of irritation. It was alleged that in the treaty with Great Britain the United States had knowingly sacrificed their connection with France by defining materials for the building or equipment of vessels as contraband. The stipulation making provisions contraband at the discretion of either party was declared to be in violation of the treaty with France, and a tacit acknowledgment of the right of Great Britain to extend a blockade to the British colonies merely by proclamation. By this last provision the Jay treaty had surrendered the very independence of French commerce which it was the duty of the United States to protect.[4]

In reply Monroe took up each complaint in order. The cognizance of French prizes by American courts he considered a violation of the treaty only when they had been taken on the high seas. He practically admitted that British privateers had been allowed to enter American ports, claiming as justification that, since the United States had no fleet,

[4] Minister of Foreign Affairs to Monroe, March 11, 1796, American State Papers, I, 732–33.

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this could not be prevented, and that such vessels could not be denied admission in stress of weather. The consular cognizance of offenses committed by French citizens, he declared, was a most difficult matter to manage in so large a country, but the federal courts had always aided the consuls in the apprehension of deserters. As to the corvette *Cassius,* he claimed that the courts should determine whether or not she had been fitted out in Philadelphia contrary to law.[5]

This answer of Monroe was in accordance with the facts. Of the four charges, Monroe did not wholly deny the first and the fourth, merely resting his refutation upon the construction to be placed on the law by the American courts. The second and third charges were practically admitted, but with extenuating circumstances. The weakness of the American navy and the difficulty of communication were excellent excuses, and pointed to unintentional violations of the treaty in these two instances. Monroe's defense of these alleged violations of the treaty between the United States and France was, therefore, as strong as the circumstances warranted, though it would seem that the administration had interpreted the treaty with as little latitude in favor of France as possible.

While Monroe had given as strong an answer as he could to the first count in the French indictment, he did not attempt to deny the truth of the charge that Fauchet had been seized by a British ship in American waters. In extenuation he explained that the President had taken ample measures to avenge the outrage, having revoked the exequatur of the consul who had been responsible for the seizure. Moreover, the minister to England had been instructed to bring formal complaint.

The weakest point of the defense is in answer to the third cause of complaint, the Jay treaty. England, Monroe showed, had never acceded to the principle of armed neutrality. Conditions had at least not changed for the worse.

[5] Monroe to Minister of Foreign Affairs, March 15, 1796, Writings of Monroe, 2, 467–82.

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Where before there had been no regulations at all, an exact definition of rights had been secured, though better terms might have been desired. The Jay treaty, Monroe pointed out, did not prevent provisions from being carried to France, except where they had already been classed as contraband. As a sop to the French indignation at this stipulation, he called attention to the compensation guaranteed to the owner where provisions destined for a blockaded port were seized. He concluded with the hope that by candid explanations all such suspicions might be removed.[6]

The feebleness of this last defense is obvious. Monroe had evaded any direct answer to the specific complaints, and for an excellent reason. The stipulations of the Jay treaty which classed as contraband materials for ship-building, and allowed provisions to be seized merely by proclamation, constituted in fact an infringement upon the previous treaty with France. Such a matter was not to be mended by a more exact definition of contraband. The charge of favoring Great Britain and so of surrendering the former friendship for France, Monroe ignored. He had already been informed, in the defense of the United States by Randolph, that an attempt to negotiate a commercial treaty with France had failed owing to the inordinate demands of the French government.[7] This fact he should have mentioned as meeting the charge that the United States had favored Great Britain in contracting a commercial treaty, though it could not have justified the clauses that violated the treaty with France. With this exception Monroe's defense, while weak, was as strong as the facts warranted. Possibly he could have effectively met the bill of complaint with a similar list of instances in which France had violated her treaty obligations with the United States.

Other evidence shows that Monroe had answered the charges in accordance with the information on this subject that had been furnished him by the government. A letter

[6] Monroe to Minister of Foreign Affairs, March 15, 1796, Writings of Monroe, 2, 467–82.

[7] Secretary of State to Monroe, June 1, 1795, American State Papers, 1, 705–12.

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of Edmund Randolph to Fauchet, which was doubtless in Monroe's hands at this time, takes up the charge that American courts had discriminated against French privateers. Congress had held, Randolph declared, the principle that it was a penal act to carry on war with nations at peace with the United States. French citizens had suffered because they had been the chief offenders. According to this principle the President interpreted the treaty to admit any armed vessels except those that came in with prizes they had made of the people and property of France. When they came in with French prizes or made of American ports stations from which to set out, they fell under the President's prohibition. Such an interpretation, of course, was much in favor of France, and practically prevented seizures of French vessels by British cruisers.

In the same letter Randolph took up the cases where it had been alleged that British favoritism had been displayed by the American government. He enclosed correspondence with the British minister, Hammond, to show that, where the British illegally brought in a French prize, they had been severely reprimanded. But the correspondence shows more than Randolph probably intended. The blustering attitude of the letter of the British minister displays little respect for the American government. While acceding to the demand that British vessels should not bring in prizes, Hammond expressly adds that he does so, not from respect for the French treaty, but from a desire for peace.[8] As an official definition of the attitude of the American government upon the alleged violations of the treaty, this letter from Randolph shows that Monroe's defense on these points was as vigorous as the circumstances permitted, for obviously the President's interpretation of the privateer clause was in direct contradiction of the treaty, and either an unwillingness or an inability to deal effectively with the offending British vessels had been displayed.

The case of Collet, captain of the frigate *Cassius*, which

[8] Edmund Randolph to Fauchet, May 29, 1795, Monroe Papers, 8, 945–46.

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formed part of the French charges of violations of the treaty, requires some explanation. It had already been brought up by the French government as early as December, 1795, when Monroe had proposed, if possible, to have the matter remedied.[9] Collet's vessel, the American government claimed, had been fitted out at Philadelphia. If this was proved to be the true status of the case, Collet was liable for damage in a suit that had been instituted in the federal court by two American citizens. France claimed that the court had infringed upon the sovereignty of the French people in ruling that Collet should prove where the vessel had been fitted out, and Monroe was asked to transmit to the home government an *arrêté* threatening reprisals unless the case against Collet was dropped.[10] Answering this threat, Monroe declared that the court had merely called upon Collet to show that the seizure had been made in his official capacity. As no decision had been reached, he could not see any just ground for complaint.[11] According to his view, the French complaint in this case was badly taken, yet it must be acknowledged that, in dealing with an international affair of this kind, great lack of tact had been displayed, and certainly, before taking measures against a French officer, the American government should have at least established its case.

Perhaps feeling that the affair of the *Cassius* demanded further explanation, Pickering afterward wrote Monroe that, under the name *Les Jumeaux,* the vessel had been fitted out in Philadelphia as a privateer. Eluding the officers sent to apprehend her, she had put out to sea, but her agent had been fined $400 for violation of the law. Afterward her name had been changed to *Cassius.* To secure her release France must prove the claim that the vessel had been transferred to the French government after she had left

[9] Minister of Foreign Affairs to Monroe, and reply, December 14 and 19, 1795, Despatches, 4, 347–49.

[10] Minister of Foreign Affairs to Monroe, October 3, 1796, Despatches, 4, 422–24.

[11] Monroe to Minister of Foreign Affairs, September 27, 1796, Despatches, 4, 422–23.

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Philadelphia.[12] With this explanation, which should have been made long before instead of letting Monroe alone answer the demands of the French government, a much stronger defense on this point could have been made. It must be noticed that, while Pickering had continually been urging Monroe to answer all complaints, he had hitherto withheld any official explanation of this affair. The conclusion, in view of the evidence contained in the letters from Randolph and Pickering, must be that Monroe had answered the alleged violations of the treaty with France in as adequate a manner as was possible.

Officially, Pickering expressed satisfaction with Monroe's answer to the French complaints, although he considered that the facts and arguments with which the latter had been furnished authorized a more forceful explanation on some points. In view of the scantiness of the correspondence with which the Secretary had favored Monroe it is difficult to see just what these facts were. Possibly he alluded to the letter from Randolph to Fauchet which is found in the Monroe correspondence. With the exception of the attempt to conclude a commercial treaty with Spain, Pickering's criticism is unfounded. Privately, Pickering showed his true opinion, assuring the President that Monroe's defense was as weak as possible. At the same time he insinuated that this weakness of statement was a proof that Monroe had conjured up the French dissatisfaction for party purposes.[13] This private communication shows how slightly Monroe's sincere efforts to keep the peace were appreciated, and how constantly he was liable to be maligned and misjudged by such pro-British partisans as Pickering. A very confidential letter from Washington to Gouverneur Morris, authorizing communication with Lord Grenville, fell into the hands of the French government and strengthened the

[12] Secretary of State to Monroe, July 22, 1796, Monroe Papers, 8, 995.

[13] Pickering to Washington, July 21, 1796, Writings of Monroe, 2, 402.

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impression of the insincerity of the friendship of the United States for France.[14]

While endeavoring to prevent any action on the part of France that might precipitate trouble, Monroe endeavored to attain the other objects of his mission. It may be recalled that, before the President ratified the Jay treaty, Monroe had secured the promise of French aid in the negotiations with Algiers. Unofficially he was informed in September, 1795, that peace had been concluded with Algiers.[15] Apparently Monroe had been ignored in these outside negotiations. If his help was to be effectual, it was essential that he be aware of every important measure taken. Already he had informed the French government that at the request of Colonel Humphreys for French aid a special agent, Joel Barlow, had been appointed to negotiate with Algiers. When Humphreys concluded peace, ignoring the appointment of Barlow and the requested good offices of France, Monroe was placed in an embarrassing position. Finally, as a loophole of escape from such a position, Humphreys, who seems all the while to have doubted whether a lasting peace had been concluded, agreed with Monroe that Barlow should proceed upon his mission, taking the presents already purchased for use in an emergency.[16] Monroe, therefore, requested the confirmation of Barlow as consul to Algiers.[17] Humphreys seems to have realized the value of Monroe's aid in the negotiations with the Barbary States, for he soon wrote, informing Monroe that there should be a separate consul in each one of them. He also alluded to the extensive preparations, by the purchase at Paris of articles for presents, that had been made for the negotiations in Tunis

[14] Monroe to Washington, March 24, 1796, Writings of Monroe, 2, 482.
[15] Robert Montgomery to Monroe, September 26, 1795, Monroe Papers, 8, 966.
[16] David Humphreys to Monroe, October 4, 1795, Monroe Papers, 8, 967.
[17] Monroe to Secretary of State, October 4, 1795, Writings of Monroe, 2, 368–78.

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and Tripoli.[18] Evidently, when he deemed it advantageous, Humphreys was very willing to disclose his plans to Monroe.

Meanwhile, Joel Barlow, upon his arrival at Alicante, found that Colonel Humphreys had not sent the promised instructions, and that, in consequence, he was left without a guide for his future conduct. This was a clear breach of the understanding between Monroe and Humphreys. A further complication was caused by the failure of the negotiations to progress as smoothly as had at first been hoped. The stipulated sum of money had not been paid and the Dey, regretting thoroughly the agreement with the United States, was anxious to recede from it. He wished rather to conclude a peace with Portugal, which probably would have meant war with the United States. Barlow even heard a rumor that the English consul had advised the Dey where to cruise for American vessels.[19] So thoroughly had Donaldson, Humphreys' agent, irritated the Dey by lack of tact that the Algerian despot threatened, if the affair was not settled within a month, that he would order all Americans to the dreaded galleys. In this crisis Barlow acted with decision. Hastening to Algiers upon his own initiative after the receipt of such alarming news, he requested Monroe to warn all American vessels from the Mediterranean until they should receive notice that it was safe.[20] Humphreys' negligence in this affair seems almost to have been intentional, for he had already written Monroe that the negotiations were to be carried on under the mediation and good offices of the French government, although he claimed that the French consul at Algiers not only had not helped, but had tried to have the demands of the Dey so augmented as to be almost impossible.[21] Yet after neglecting to send Monroe news of the attempted settlement, and then again accepting his proffered help, Humphreys had not properly

[18] David Humphreys to Monroe, October 7, 1795, Monroe Papers, 8, 969.
[19] Joel Barlow to Monroe, February 23, 1796, Despatches, 4, 365–66.
[20] Joel Barlow to Monroe, February 26, 1796, Despatches, 4, 368–70.
[21] David Humphreys to Monroe, January 23, 1796, Monroe Papers, 8, 979.

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supported Barlow, the agent sent out with the knowledge of the French government, and had left him to deal with the crisis without instructions. When he found that the money could not be obtained in time Humphreys finally apprized Monroe of the condition of affairs.[22] Barlow concluded a treaty with the Dey upon principles which, he hoped, would stand.[23] In order to free the American prisoners he drew upon Donaldson, who had to his credit more than enough for the settlement. In consequence of this settlement, Barlow sent to Marseilles eighty-eight Americans and forty-seven Neapolitans who had been rescued from the horrors of Algerian slavery.[24]

The Algerian treaty was, therefore, finally concluded by Monroe's agent, Barlow. Despite the assertions of the French government to the contrary, Barlow found that the French influence with the Dey had greatly declined. England and Spain, who were both known to be hostile to American interests in Algiers, were high in favor.[25] Barlow's success under such circumstances was all the more notable.

Monroe suspected that Humphreys had acted upon English assurances of aid in Algiers. If such help had been proffered, he felt sure that it had been offered as a mere blind in order to detach the United States from France. Yet France, by doing everything in her power to aid the United States, would, Monroe wrote, create a favorable impression tending to aid the union of the two republics, and might, perhaps, help the republican cause.[26] While the copy of this letter found in the Monroe Correspondence does not disclose to whom it was addressed, it was probably sent to a French official. The treatment which Monroe had experienced from Colonel Humphreys in the Algerian negotiations had naturally irritated him, but he should not have

[22] David Humphreys to Monroe, March 3, 1796, Monroe Papers, 8, 981.
[23] Joel Barlow to Monroe, April 5, 1796, Despatches, 4, 385.
[24] Joel Barlow to Donaldson, July 12, 1796, and Deposition of Capt. Calder, Despatches, 4, 407–10.
[25] Joel Barlow to Col. Humphreys, April 3, 1796, Despatches, Algiers.
[26] Monroe to Unknown, 1796, Monroe Papers, 1, 10.

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made such insinuations against a fellow diplomat. Whether or not Monroe was justified in this charge against Humphreys has not been proved. Yet to Monroe's influence must be largely credited the settlement of the trouble with Algiers, as well as the Spanish guarantee of the free navigation of the Mississippi River.

While engaged in the Algerian negotiations Monroe also took measures for the protection of American citizens in France. In view of the trouble caused by Englishmen who had secured passports under the guise of Americans, the utmost care was necessary in this matter, and Monroe promised the Minister of Foreign Affairs to scrutinize all cases closely.[27] In extending this protection Monroe insisted upon the right of American citizens to a trial by consul. In the case of William Vans, an American residing in Havre whose property had been seized by Joseph Sands, another American, he called the attention of the Directory to their right of trial by an American consul.[28] This demand, it must be conceded, was scarcely consistent with Monroe's defense of American violations of this stipulation. Upon the passage of a decree that all strangers not specifically exempted should depart at least ten leagues from Paris, Monroe asked that the one hundred and fifty Americans residing in the French capital should be excepted. As these American citizens were for the most part engaged in business, he asserted that it was for the interest of France, as well as of the United States, to allow them to remain.[29] To carry out the purpose of the French government, he proposed that all passports made out previously to the decree be recalled, and new ones issued. Monroe also sent a list of Americans in Paris for whom he could vouch, expressing at the same time his entire willingness to aid in detecting frauds.[30] This proposal must have been satisfactory to the

[27] Monroe to Minister of Foreign Affairs, May 5, 1796, Monroe Papers, 1, 20.
[28] Monroe to Secretary of State, January 26, 1796, Writings of Monroe, 2, 447–54.
[29] Monroe to Minister of Foreign Affairs, May 12, 1796, Despatches, 4, 389–91.
[30] Monroe to Minister of Foreign Affairs, May 14, 1796, Despatches, 4, 391.

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Directory, as there appears to have been no further correspondence upon the subject.

The final determination of the House of Representatives to make the Jay treaty effective still further increased Monroe's difficulties. All doubt that the treaty would be put in force being now dispelled, Monroe feared that the French government would proceed to extremities. Early in June he wrote that, although no successor to Adet had been named, he supposed the appointment would be made as a mere matter of official routine. In the same letter he expressed his doubt whether any Americans would be sent out of the country under the recent decree against foreigners.[31] This last statement betrays Monroe's fear of some future hostile action on the part of the Directory. The long delay in appointing a successor to Adet was significant. The very fact that Monroe mentioned this matter shows that he feared the delay was intentional, and that the former favorable attitude toward the United States had been changed by the final determination of the House to carry out the Jay treaty.

The Directory soon apprised Monroe of its intentions. Apparently the French government had only awaited this final ratification in order to take definite action. Just two weeks after Monroe's letter to the Secretary of State, the Minister of Foreign Affairs wrote that, before laying the matter before the Directory, he wished to learn officially the truth of the report that the treaty had been ratified by the House.[32] Monroe discreetly replied that he himself had had no further news. He could, therefore, only make additional explanations of his previous answer to the complaints on this score.[33] In reply, the Minister of Foreign Affairs, as spokesman for the Directory, sent a note which had evidently been carefully considered, and which defined in unmistakable terms the attitude of the French government.

[31] Monroe to Secretary of State, June 12, 1796, Writings of Monroe, 3, 4–6.
[32] Chevalier de la Croix to Monroe, June 26, 1796, Despatches, 4, 392–93.
[33] Monroe to Minister of Foreign Affairs, June 27, 1796, Despatches, 4, 393–4.

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The note declared that the ratification of the Jay treaty in the midst of hostilities between France and Great Britain had produced a breach in the friendship of France and the United States by the abandonment of the stipulations for neutrality contained in the treaty of 1778. As a result of this action, Monroe was informed that this part of the treaty was regarded as suspended.[84]

Though weak as a defense, Monroe's reply to this letter is probably as forcible as the circumstances warranted. The claim that the neutrality stipulations had been suspended by the Jay treaty was, he asserted, not established by the letter of the treaty. On the other hand, Monroe brought up the many French violations of the treaty, citing as specific instances the seizure of supplies in the West Indies and the spoliations inflicted upon American commerce. He concluded with the hope that the friendship between the United States and France might prove an enduring one.[85] Though he partially justified the course of the United States thereby, Monroe did not materially strengthen his position by indulging in these recriminations. France had withdrawn the obnoxious decree, and had already promised to pay all the damages incurred under its operation. In return the United States was under obligation not to ratify the neutrality provision of the Jay treaty. Monroe could not deny that the spirit and the operation of the Jay treaty must work much injury to French commerce.

Though no definite steps had been taken by the French government up to this time, Monroe wrote to the Secretary of State that further trouble was to be anticipated. Already the Directory had hinted that France would either press the claims for injuries by the United States, or else refuse the payments of damages for spoliations inflicted upon American commerce. As a further proof of hostility, a person high in station had intimated to him that, in concluding so hastily the Spanish treaty, the United States had committed a

[84] Minister of Foreign Affairs to Monroe, July 7, 1796, American State Papers, 1, 739.

[85] Monroe to Minister of Foreign Affairs, July 14, 1796, Writings of Monroe, 3, 27–34.

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breach of friendship with France.[36] Despite these intimations of the changed attitude of the French government, Monroe succeeded in having rescinded the appointment of Mangourit on a special mission to the United States. Besides the bad effect of such a mission, this appointment would have been especially offensive to the American government, since Mangourit, as former French consul at Charleston, had proved the source of much trouble to the United States.[37]

The rumor of this envoy extraordinary to be sent by France, with a fleet to follow and enforce his commands, induced the British government to write to their minister in the United States, instructing him to represent to the American government that Great Britain would make common cause with the United States in case the Jay treaty precipitated a struggle with France. This incident illustrates the British policy of separating France and the United States as much as possible.[38]

The exercise of all Monroe's tact could not prevent altogether the retaliatory measures of the French government. A decree of the Directory soon announced that France would hereafter adopt the same policy toward neutrals as was observed by Great Britain. At the same time notice was sent to Monroe of the suspension of Adet as minister to the United States. In answer to the note transmitting this important information, Monroe wrote a most conciliatory letter, expressing the hope that this discontent might prove only transitory. Not attempting to comment on the steps that had been taken, he declared that he would await orders from the President before replying. In concluding, Monroe acknowledged the kindness with which the French government had received the explanations by which he had earnestly endeavored to prevent measures of this kind.[39] Mon-

[36] Monroe to Secretary of State, July 24, 1796, American State Papers, 1, 738–39.

[37] Monroe to Secretary of State, August 4 and 15, 1796, American State Papers, 1, 741.

[38] Secret Despatch to Liston, March, 1796, Henry Adams Collection, Liston, 1796–98.

[39] Monroe to Minister of Foreign Affairs, October 12, 1796, Despatches, 4, 427–28.

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roe seems to have overestimated somewhat the importance of the withdrawal of Adet. The French government regarded this act, not as a rupture of all relations with America, but as a measure designed to drive the United States back to its old alliance with France.[40] As long as the American adherents of a French alliance were so strong and influential, there was little danger of an actual rupture which would have thrown the United States into the arms of Great Britain. Doubtless the French authorities suspected, if they did not know, the attitude Great Britain would assume in such a case. But Monroe was hardly in a position to appreciate such a policy.

In refraining from a direct reply to the note setting aside the neutrality stipulations and suspending the French diplomatic representative to the United States, Monroe followed out the instructions he had received from Pickering only a short time before. On June 13 the Secretary of State had written a most extraordinary letter as from one gentleman to another. In this communication Pickering roundly scored Monroe because, knowing as he did the discontent engendered by the Jay treaty, he had not gone before the Directory to remove these objections. In tone the letter was most offensive, the language and the entire attitude being rather that of a master to a menial. Giving the sentiments of the President, Pickering desired that Monroe at once, if he had not already done so, make full and satisfactory explanation to the French government. Moreover, Pickering curtly informed Monroe that written communications with the French government were more desirable than personal interviews. A complete copy of such communications must in all cases be forwarded to the Department of State. Assuredly this last requirement is significant of the distrust with which the administration regarded Monroe.[41] Evidently the Secretary of State had not received Monroe's letter of March 24, 1796, with copies of the French com-

[40] Minister of Foreign Relations to M. Perignon, September 24, 1796, Henry Adams Collection, Adet, 1795–97.

[41] Secretary of State to Monroe, June 13, 1796, American State Papers, I, 737–38.

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plaint and his reply. Yet, even while anticipating trouble, Pickering left to the discredited minister, who had not been trusted with a copy of the Jay treaty, the form and substance of the explanations to be made. Such conduct seems to justify the charge that Monroe was being retained in office merely to keep the peace with the French government.

Monroe's answer to this letter of the Secretary of State was manly and frank. First he complained that he had been systematically ignored for the last few months, receiving from January 7 to June 13 no official communication except a brief letter from the chief clerk of the Department of State. If the government was dissatisfied with his conduct, he declared, complaint should have been made before. Nor was it a just charge that he had failed to present explanations in time, since up to February the French government had made no intimation of discontent. Very pertinently Monroe inquired whether, because he suspected that the French government was discontented with the Jay treaty, he should have invited discussion of the matter. Proceeding to show that he had made due explanations as soon as possible, Monroe related that when calling upon Jean de Brie, who was in charge of American affairs, he had found him preparing a letter on the subject of the Jay treaty, but had requested him to delay the report until the American answer had been submitted. Only after much trouble had the Directory been induced to give specific objections. While intimating that their intentions toward the United States were most friendly in regard to Louisiana, they had assured him that the decree for Adet's recall would soon be issued.[42] Later Monroe wrote that he was convinced, after explicit assurances on the part of the Directory, that France would take Louisiana only in case of a war with England, and that there was no design to seize Canada or to annex the western country to Louisiana.[43] Later developments show how hollow were the French protests in

[42] Monroe to Secretary of State, September 10, 1796, Writings of Monroe, 3, 54–62.

[43] Monroe to Secretary of State, September 21, 1796, American State Papers, 1, 744.

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regard to Louisiana. This answer of Monroe is consonant with the facts as presented in the available material. He had replied to the French complaints as soon as they were presented and as vigorously as he could. Obviously he could not anticipate trouble.

Pickering appears to have caused trouble for Monroe continually, and to have worked gradually for his displacement by making insinuations against him to Washington. The marked difference in the tone of his public and private notes to the President on Monroe's reply to the French government has already been noted. At times, it must be confessed that Monroe's conduct justified this criticism. Giving the concurrent Cabinet opinion upon a letter from Monroe to Dr. Logan, which had been printed in Bache's paper, Pickering called special attention to the long detail it gave in regard to French affairs. In touching upon the Jay treaty he quoted Monroe's rather bombastic statement that it had operated "like a stroke of thunder and produced in all France amazement." This letter, Pickering declared, had not fallen into the hands of the printer inadvertently, but Monroe had sent it to Dr. Logan for that special purpose.[44] Undoubtedly Monroe had committed a grave blunder in allowing the publication of this letter. The different political standards at that time perhaps justify this indiscretion, but Pickering was quick to seize upon the part that was likely to give the greatest offense to the administration.

Not willing to trust wholly to official communications, Pickering wrote to the President privately that John Churchman, a Maryland scientist recently in Paris, had stated that most of the talk in that city about the Jay treaty had been by Americans rather than by Frenchmen. This statement was misleading. Churchman, a plain American citizen, was hardly in a position to be conversant with the sentiment of the French government. In view of Monroe's letters and

[44] Pickering's Report, July 4, 1796, and Monroe to John Logan, June 24, 1795, Writings of Monroe, 3, 6–8.

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his well-known character for probity, such a statement should not have been credited for a moment.[45]

Pickering's continued insinuations eventually prevailed. In November Monroe was notified of his own removal, for causes already given in the note of June 13, and of the appointment of Charles C. Pinckney as his successor. Pickering alleged that the President's obligation to keep the peace with France had led to the letter of June 13, especially after the communications from Monroe in February and March. "A further consideration of these circumstances," he adds, "with other concurring circumstances determined the President to make the appointment I have announced." It is a noticeable fact that Pickering fails to specify these "concurring circumstances."[46]

While Monroe does not seem intentionally to have opposed the administration at this time, he was indiscreet, both in sending and in receiving letters hostile to the party in power. Such conduct gave color to Pickering's insinuation that he was working against the interests of the American administration. Just before the President signed the Jay treaty Melancthon Smith wrote to Monroe that Jefferson, who was popular, never would have signed such an instrument.[47] So obviously to push Jefferson forward as a possible Presidential candidate was much out of taste in a letter written to an American minister. After Washington had signed the Jay treaty Robert R. Livingston announced that the British had renewed their depredations. He cited the attempt to seize M. Fauchet and the alleged opening of Monroe's despatches by British agents as signs of the real hostility of Great Britain. Livingston assured Monroe of the warm attachment of the American people for France, and enclosed resolutions of different towns to this effect.[48]

[45] Pickering to the President, July 29, 1796, Writings of Monroe, 2, 494.

[46] Secretary of State to Monroe, August 22, 1796, American State Papers, 1, 741–42.

[47] Melancthon Smith to Monroe, August 6, 1795, Monroe Papers, 8, 959.

[48] Robert R. Livingston to Monroe, August 25, 1795, Monroe Papers, 8, 960.

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Jefferson also, in writing to Monroe, spoke of the bitter hostility of the American people toward the Jay treaty, since they considered that it was hostile to France. In case it received the executive sanction he feared a clash between Congress and the President. Jefferson especially commended the bravery of Stevens Thomson Mason, who, despite the Senate's wish for secrecy, had given out the treaty.[49] Even Samuel Bayard, in charge of American claims at London, admitted that, beyond securing the evacuation of the western posts, Jay had accomplished nothing, and had committed many errors of judgment.[50] These letters show that Monroe kept himself informed of the sentiments which the Jay treaty had produced in America. Nor does this information appear to have been altogether unsolicited, for, in a letter to Aaron Burr, Monroe asked to be informed of the exact state of feeling which the Jay treaty had produced in the United States. He also remarked that the condemnation it had already received there had produced a most happy effect in France.[51] Just what use Monroe made of the information that he received from all these letters cannot be definitely proved. Assuredly he was on terms of the friendliest intercourse with officials of the French government. Whether he communicated the information from America to the French officials is not certain. If he did, it was probably in a semi-official way, as his motives to prevent discord between the United States and France are unquestioned. At least he seems to have been able to gauge accurately the state of feeling in France, and not to have hesitated to communicate it to his friends in America.

In a letter to Madison, Monroe explains his attitude in trying to conciliate the French government. As giving his view of how far he might go in this delicate matter, this letter is most important, as it shows to what extent the accu-

[49] Thos. Jefferson to Monroe, September 6, 1795, Monroe Papers, 8, 962.
[50] Samuel Bayard to Monroe, October 18, 1795, Monroe Papers, 8, 970.
[51] Monroe to Aaron Burr, January 10, 1796, Monroe Papers, 1, 8.

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sations on this score that were afterwards made against Monroe were true. Speaking merely as an outsider Monroe asserts that the American sentiment in regard to the treaty had produced a favorable impression in France. He carefully explains his position in the matter. As it is important to see just what bounds Monroe considered would be observed, this statement may be quoted in part. Monroe asserts that he has never touched upon the Jay treaty "except when mentioned informally to me, and then confining myself to the limits observed by the other party, giving only such explanations as were sought and inculcating always good temper and moderation on the part of this government toward us, as the surest means whereby to unite forever the two republics."[52] Just how far Monroe went in these informal conversations he does not indicate. Even if he confined himself within the limits set by the other party he might have erred considerably. It would have been more discreet if he himself had set the limits. Knowing well, as he did, the sentiments of the American people, the predilection for France which Monroe had not hesitated to exhibit in other instances might well have led him to betray this state of feeling to the French government. In his endeavor to keep the peace he had doubtless discriminated, probably unconsciously, between the attitude of the government which he represented and that of the American people.

The news of Pinckney's appointment was not wholly unexpected. Monroe had received a previous warning that he might anticipate recall. In sending him a publication dealing with the relations between the United States and France, Henry Tazewell declared that he thought it might be intended for use in influencing the coming elections, or as a feeler to test the advisability of Monroe's recall. He warned Monroe, therefore, that very probably those in favor with the President might work for his recall. The alleged loss of public money in Monroe's house and rumors that he had become a heavy speculator in France formed the basis

[52] Monroe to Jas. Madison, January 12, 1796, Writings of Monroe, 2, 432–39.

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of charges which, in Tazewell's judgment, were likely to injure him greatly. As his friends knew nothing of the facts, they had been unable to explain these charges.[53]

A letter written to Madison in July shows that Monroe was deeply hurt by these charges and by the indifference with which he had been treated. Monroe expressed his belief that the pro-British party wished to take advantage of the French alliance, while at the same time making representations of friendship to England. His speech before the Convention and the documents that he had then produced had lost them the confidence of the latter country. Indeed Monroe intimated that the administration desired a rupture with France. Most important of all, he expressed his earnest wish for the election of Jefferson as President, since he was convinced that, in that event, the relations with France would be adjusted satisfactorily.[54] From this last statement the inference might be drawn that Monroe's real purpose in retaining his office, despite the insult and indifference with which he had been treated, was to preserve the peace with France until the party in favor of the French alliance might come into power. His recall blasted all such hopes.

In the instructions to Pinckney, Pickering reveals the true cause for Monroe's recall. Pinckney is specifically told to remove all suspicions that the American government is really hostile to France, and to try to restore the former friendship for the United States. Especially is he to assure the French government that the sentiments of the government and of the people of the United States are the same.[55] Monroe had received a charge similar to this last clause, and had perhaps gone contrary to this injunction, although unwittingly. In the light of after events, Monroe's attempt to represent the people rather than the government of the United States appears to have constituted the real reason

[53] Henry Tazewell to Monroe, May 19, 1796, Monroe Papers, 8, 989.

[54] Monroe to Madison, July 5, 1796, Writings of Monroe, 3, 19–27.

[55] Thos. Pickering to Chas. C. Pinckney, September 14, 1796, Instructions, 2, 244–57.

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for his removal. The private correspondence of Pickering with the President points to a like conclusion.

Despite the disagreeable circumstances of his own recall, Monroe did everything possible to smooth the way for his successor. Accordingly, immediately after Pinckney's arrival, he tried to arrange for his reception and for taking his own leave. But the French government, in notifying Monroe that the functions of the French minister to the United States were suspended, had already given an intimation that diplomatic relations were dissolved. Expressing the anxiety of the Directory to reëstablish the former friendly relations with the United States, the Minister of Foreign Affairs pointedly called attention to his willingness always to listen to explanations, and especially those given by Monroe.[56] This statement seems to imply that the rumor of Monroe's recall had reached France, and to intimate that no other minister would be acceptable. Certainly it was indicative of a strong trust in Monroe as distinguished from the American administration. Doubtless the Directory was well aware of Monroe's sentiments and of his correspondence with the advocates of the French alliance. That Monroe himself had deliberately attempted to discredit the American government cannot be proved. Notwithstanding the significant warning contained in this note and the recall of Adet, the Minister of Foreign Affairs appointed a day on which to receive Mr. Pinckney. Two days later a second note informed Monroe that the Directory had finally decided not to receive nor to recognize a minister from the United States until the present trouble had been settled.[57]

Monroe himself took leave of the Directory on December 27, 1796. While his farewell speech was not nearly so fulsome as his opening address before the Convention, it was decidedly in accordance with his sentiments in favor of France. Congratulating the Directory on the internal peace of the country, he declared that he would do everything possible to

[56] Minister of Foreign Affairs to Monroe, October 7, 1796, American State Papers, I, 745.

[57] Minister of Foreign Affairs to Monroe, December 9 and 11, 1796, American State Papers, I, 746.

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promote harmony between France and the United States. He also acknowledged the kindness he had received at the hands of the French government. The answer of the President of the Directory was in a similar strain. At first upbraiding the United States for preferring Great Britain, he recalled the effectiveness of the French aid during the American Revolution. Evidently the President intended this part of his address as an official complaint to the American government. Proceeding to take leave of Monroe personally, the President's tone changed. Descanting upon the esteem of France for the American people, as distinct from the government, he directed Monroe to assure them that France was altogether willing to restore the former friendly relations. A part of the conclusion of his speech may be quoted to show how the government regarded Monroe: "As for you, Mr. Plenipotentiary, you have combated for principles, you have known the true interests of your country, depart with regret. We restore in you a representative to America, and we preserve the remembrance of the citizen whose personal qualities did honor to that title."[58] Such open expression, however, shows that Monroe, though probably unconsciously, had made a distinction between the sentiments of the American government and those of the people. Even though he did not do this intentionally, such a course must have justified his recall.

Monroe sailed for America on January 1, 1797. After his arrival none of the many expressions of sympathy and good will with which he was showered was more appreciated than a series of resolutions passed at a mass meeting of citizens of Philadelphia, which, in the highest terms, endorsed his conduct during the mission, affirming that he had done nothing for which any American citizen might need to blush.[59]

[58] American State Papers, 1, 747.
[59] Resolutions, Monroe Papers, 8, 1005.

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CONCLUSION.

It is a difficult matter to estimate fairly Monroe's mission in France. A great mass of correspondence upon this subject is available, but almost the whole of it is more or less tinged with partisanship. Political feeling ran high during those early days of the American republic, and public men were quick to misconstrue the acts of their opponents. The standards of the times were different from those of the present. With scarcely two decades of national existence passed, a real criterion of the conduct appropriate to public life had not been fully established. In view of these facts it is well-nigh impossible to give an accurate judgment of Monroe's actions as minister to France. Yet certain documents are available from which a fairly satisfactory conclusion may be reached.

After Monroe's arrival in the United States the subject of his mission was revived. He felt that it was necessary to clear his good name of the many accusations that had been brought against him. With this purpose, in answering the letter of recall, Monroe asked for the exact reasons for his removal, in order that he might make a suitable reply.[1] Pickering refused this request, alleging that the President possessed discretionary power of recalling ministers to foreign countries upon grounds which he might not care to make public.[2] This refusal by Pickering was hardly in accordance with Washington's instructions at the time of Monroe's recall. Always kindly and considerate to others, the President had written Pickering in a private letter that, as Monroe's recall had been decided upon, it was "candid, proper, and necessary" to apprize him of the fact and, "in proper terms," of the motives that had impelled it.[3] Certainly Pickering's brief letter of recall was hardly in accord-

[1] Monroe to Secretary of State, July 6, 1797, Writings of Monroe, 3, 66–67.
[2] Timothy Pickering to Monroe, July 17, 1797, Monroe Papers, 8, 1018.
[3] Washington to Pickering, August 10, 1796, Writings of Washington, 13, 256–57.

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ance with these instructions. Had Washington been President when Monroe asked for an explanation, he would doubtless have received at least a more gracious answer. Pickering's curt refusal illustrates the bitter party spirit that was so strong between Federalists and Anti-Federalists during the administration of John Adams.

Monroe maintained that the executive was accountable to the government and that to hold an opposite doctrine was wholly contrary to the principles of republican government. In a very formal note, written to Pickering in the third person, he requested that he be assigned desk room that he might revise his correspondence with the Department of State.[4] No answer was vouchsafed by Pickering to these communications. Finally Monroe's persistence elicited a reply. While assuring Monroe that he might revise his correspondence at his pleasure, Pickering affirmed the right of the President to withhold his reasons for the removal of all officers, except judges, who had been appointed with the consent of the Senate. Going into details, Pickering intimated that, in dismissing a minister, the President might have had reports from sources improper to disclose. Furthermore, Pickering declared that, if a minister had been found lacking in judgment, skill or diligence, or if there had been any doubt as to his views, his removal was justified. Again, it was possible that a minister, while officially loyal, might hold improper correspondence on political subjects or associate with the opponents of the government he represented, or he might even, from mistaken views of his duty, have spread wrong ideas of the administration to which he owed his appointment. That he might soothe Monroe's wounded feelings, Pickering implied that removal did not always mean misconduct, adding significantly that the President might remove a public officer on good grounds which he reserved to himself so that the succeeding administration could not possibly find the reasons for the removal.[5]

[4] Monroe to Secretary of State, July 19, 1797, Writings of Monroe, 3, 70–73; Department of State, Despatches, 4, 432.

[5] Timothy Pickering to Monroe, July 24, 1797, Monroe Papers, 8, 1020.

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This letter is a most significant one, plainly giving the reasons for Monroe's recall. The hints of improper correspondence, of association with persons hostile to the government, and of constant subversion of its interests, point to the reasons for the dismissal. Monroe had carried on improper correspondence with the opponents of the government in America; he had harbored Paine, a violent enemy of Washington, in his own household. Also he had been charged with exciting the enmity of France against the American government. Altogether, the official bill of complaint against Monroe, though veiled in hypothetical cases, was most apparent in this letter from Pickering. Certainly is was as much of an official explanation as Monroe could well have expected from so ardent a Federalist. The next day Pickering wrote again that, while he was unable officially to give the reasons for the recall of Monroe, he would, as an individual, give the opinions for Monroe's removal that were expressed to the President during the previous summer.[6]

Pickering's two letters deprived Monroe of any hope of an official declaration of the cause for his removal. It is a significant fact that they were not copied in the official records but are to be found only in the Monroe Papers. While Pickering's attitude was in accordance with the conditions made in the appointment, which reserved to the President the power of removal at pleasure, Monroe considered that he was entitled to more explanation than mere insinuations upon his conduct. The doctrine enunciated by Pickering, he declared, made all public officials the menial officers of the President. As for the innuendoes that he had been the tool of France, he asked for proof, and he added that, since his political views were fully known at the time of his appointment, nothing could be alleged in that respect.[7] This last statement is practically an apology for Monroe's greatest mistake. Whether knowingly or not, he had posed as the representative of the party in favor of the

[6] Timothy Pickering to Monroe, July 25, 1797, Monroe Papers, 8, 1022.

[7] Monroe to Secretary of State, July 3, 1797, Writings of Monroe, 3, 73–84.

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French alliance. While the President had known his views, he was justified in supposing that Monroe would have displayed more discretion in expressing them. On the same date, in a very formal note Monroe informed Pickering that he could communicate with the Cabinet only through the administration in a matter for which he held the latter responsible. He intimated that the individual members of the Cabinet had the medium of the public press if they cared to use it.[8]

Although Monroe failed to secure official information of the reasons for his recall, a concurrent letter from the members of the Cabinet on this subject is found in Washington's Writings. Dated July 2, 1796, doubtless after Monroe's reply to the French complaints had been received, the letter considers that Monroe had not made the requisite explanations to allay the discontent of the French government. The note encloses a private letter from Monroe which had been confidentially handed to the Cabinet, and which criticised different policies of the government. The Cabinet note declares that a man who carried on confidential correspondence with the enemies of the government could not be relied upon to do his duty. The person to whom this letter was addressed and the means of getting it are not given in the note. The whole affair is to be kept secret. It may be recalled that a very similar letter had been criticised by Pickering in a private communication to Washington about this same date. Besides the letter, the Cabinet note mentions, among other circumstances, the anonymous letters from France to Thomas Blount and others. The author, it had been discovered, was Montflorence, the Secretary of the Consul-General at Paris, Fulwar Skipwith. From Monroe's close connection with these persons, the Cabinet concludes that he must have had knowledge of these anonymous letters.[9]

Other testimony from members of the Cabinet, in addition

[8] Monroe to Secretary of State, July 31, 1797, Despatches, 4, 436.
[9] Cabinet Letter to the President, July 2, 1796, Washington's Writings, 13, 216–17.

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to what has been shown as to Pickering's opinion, show the reasons that induced Washington to recall Monroe. Oliver Wolcott had already written Hamilton that for some time he had believed that Monroe should be recalled. Others, he alleged, who had doubted the wisdom of the step, were now convinced that it must be taken to stop false representations which were being made to the French government.[10] A letter of July 7 from Charles Lee, the Attorney General, confirms the opinion of the Cabinet that the President could not lawfully, during a recess of the Senate, appoint an envoy extraordinary to Paris, but that Monroe should at once be removed, and another minister appointed. As a reason for Monroe's recall Lee cites his failure to justify to France the motives of the United States with respect to Great Britain. He also considers Monroe's correspondence with the President infrequent and reserved. In fact he believes, what was true, that Monroe's correspondence with opponents of the administration was more frequent and confidential than that with the President. As a result he expresses his belief that Monroe was forwarding in France the interests of a faction rather than those of the government of the United States.[11] These letters show that Pickering, by innuendoes, had given the substance of the reasons for Monroe's recall. The very fact that much of the information upon which they were based was confidential made necessary the refusal of the administration to formulate these charges officially.

By delaying the settlement of his accounts Pickering still further exasperated Monroe. Not until April 13, 1798, over a year after the close of the mission, did he deign to apprise Monroe that certain of the items were inadmissible without the evidence of payment.[12] A receipt dated July 23, 1798, shows that the first payment was delayed still longer.[13]

[10] Oliver Wolcott to Hamilton, June 14 and 17, 1796, Hamilton's Works, 6, 129, and 132–33.
[11] Chas. Lee to Washington, July 7, 1796, Washington's Writings, ed. Sparks, 11, 485–87.
[12] Timothy Pickering to Monroe, April 13, 1798, Monroe Papers, 8, 1034.
[13] Monroe Papers, 1, 31.

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While the administration refused officially to give proofs of the charges against Monroe, or to furnish any information on the subject of his recall, prominent Federalists busied themselves in making accusations against him. The rumor that the recall was due to his speculation was revived, and he was asked for an exact statement so that his friends might refute the imputation.[14] In answer Monroe asserted that, though he had had ample opportunity for speculation, his sole investment had been the purchase of the house in which he lived while in Paris. This had not been bought from the French government, but from the previous owner who had sold it to pay his debts. Monroe enclosed papers in this same letter to prove the falsity of the charge that he had failed to forward a draft to Holland. A signed statement of William Lee, who had resided in Paris during 1796 and 1797, and who avers that he had known Monroe and his family well, confirms Monroe's statement in regard to the purchase of the house. This certificate, together with Monroe's own vigorous denial, completely disposed of the charge of speculation or of carelessness with the public money.[15]

Charges brought by Robert Goodloe Harper in the public press were semi-official, as their author was one of the ardent Federalists at that time. He repeated Pickering's insinuation that Monroe, in common with other Americans in Paris, had stirred up the present strife by his imprudent conduct and was, therefore, responsible for the state of affairs. When, in Monroe's absence, W. B. Giles called upon Harper to prove his charges, he promised to make a detailed statement.[16] This signed document really formulated the charges which Pickering had refused to give. Harper first asserted that in private conversation with several members of the French government Monroe had expressed his doubts as to whether the American people

[14] Elbridge Gerry to Monroe, April 4, 1797, Monroe Papers, 8, 1011.

[15] Certificate of Wm. Lee, July 10, 1799, Monroe Papers, 8, 1049. Monroe to Geo. Clinton, July 25, 1796, Writings of Monroe, 3, 36–41.

[16] Correspondence between W. B. Giles and Robert Goodloe Harper, May, 1797, Monroe Papers, 8, 949 and 1012–15.

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would submit to the Jay treaty, even if it were ratified by the Senate and the President. As this statement had been made in a private capacity, Harper laid little stress upon it, considering it a mere indiscretion.

As the next point in the charges, in quoting the signed certificate of one whom he described as a most honorable man, Harper accused Monroe of making his house the rendezvous of all American citizens opposed to the administration. Monroe himself, it was charged, at his own table, in the presence of several opponents of the American government and of some members of the French administration, had been particularly intemperate with respect to the British treaty and in his censures upon Washington, Jay and the Senate as its promoters. In this connection the author affirmed that Monroe had spread the idea that the American people were opposed to the policy of the executive toward France. Moreover, the statement alleged that Monroe had taken the lead in passing censure in the most unguarded terms upon measures of the American government.

Harper also alleged that Monroe had openly protected Thomas Paine as an inmate of his house, when he was known to be writing against the President of the United States and to be using every avenue in his power to influence the French government against that country. Also Harper mentioned a conversation before many persons, and especially representatives of the French government, in which Monroe declared his belief that Jay had been bribed to sign the British treaty. Although he did not possess a signed certificate of this last statement, Harper averred that he could readily obtain one. These facts, he considered, were sufficient to show that Monroe, by his actions, had confirmed, if not produced, the unfavorable impressions of the French government from which flowed such unpleasantness. If Monroe denied all these facts, Harper promised to produce his informant.[17]

The charges brought forward by Harper are at least partially met by a statement from Dr. Enoch Edwards which

[17] Robert G. Harper to W. B. Giles, June 14, 1797, Monroe Papers, 8, 1016.

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was written at Monroe's request. As Dr. Edwards had been constantly at Monroe's house in Paris, he was well qualified to speak. Monroe had asked him specially to refute the charge that he had displayed hostility toward the President.[18] In response Dr. Edwards declared that Monroe had frequently expressed to him his uneasiness on account of Paine's writings, and had asked Mr. Pinckney not to convey to London for publication a letter by the erratic author. Monroe had also tried in vain to prevent the publication by Paine of a pamphlet which attacked the President. Before a fête given to celebrate the Fourth of July in Paris, Monroe had informed him of a rumor that the President was not to be toasted, and had asked him to prevent, if possible, such ill-bred conduct, intimating how disrespectful it would be to him as American minister. Dr. Edwards declared that he had tried fruitlessly to remedy the matter. When, after sixteen toasts, none of them to the President of the United States, the health of General Washington was proposed, Monroe had responded with marked enthusiasm. Dr. Edwards afterward related this incident to Washington, explaining also Monroe's conduct toward Paine. In regard to Monroe's attitude as a whole, Dr. Edwards, who was certainly in a position to speak with authority, declared that without partiality he could say that, during his entire stay in Paris, he had considered that Monroe's first aim had been to do all the good in his power to the United States by endeavoring to keep the peace with France, a task which Dr. Edwards considered a most difficult one. Dr. Edwards then showed that Monroe had always exhibited a great aversion to disputes between Americans. In this connection he called attention to Monroe's displeasure when at his table a young man spoke slightingly of the British treaty.[19]

This letter from Dr. Edwards shows that Monroe's intentions were good and that he had exhibited no hostility toward Washington himself. But it does not disprove,

[18] Monroe to Enoch Edwards, February 12, 1798, Writings of Monroe, 3, 98–100.

[19] Dr. Enoch Edwards to Monroe, April 20, 1798, Monroe Papers, 8, 1036.

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what Monroe's own correspondence has shown, that he was most indiscreet in the means by which he tried to further the aims of his mission as he construed them to be. Nor does it refute the charge that he had distinguished between the sentiments toward France of the government and those of the people of the United States.

Two letters from Monroe to Madison written before his recall aid in refuting the charges of complicity with Paine or of hostility toward Washington. Doubtless anticipating accusations owing to his connection with Paine, Monroe wrote Madison on January 20, 1796, in order to forestall them. He had received Paine into his household, he declared, because Paine was too sick after his release to go to America. Paine, however, had refused to see that he should not implicate Monroe by writing for the public at this time. Fearing the consequences of such conduct, Monroe had begged Paine not to send a letter upon public affairs to England and America, but Paine had made no promises. Then Monroe asked Madison to see that it was suppressed.[20] A copy of this letter was sent to Burr, showing Monroe's anxiety to free himself from all accusation incident to Paine's headstrong conduct. In the second letter to Madison, written July 5, 1797, Monroe explained the incident of the toast to Washington which had been mentioned by Dr. Edwards. Several opponents of the Jay treaty had been opposed to any such toast, but Monroe had sent word that he would not attend unless the health of the Executive was proposed. A misunderstanding arose, and the toast given to "General Washington," and not to "the Executive," had caused some opposition. In order to stop any talk about the matter, Monroe declared that he thought it best to give Madison these facts. Incidentally Monroe mentioned in this letter that Paine had left his house and was preparing a virulent attack upon Washington. Monroe expressed his fear lest Paine might publish matters that had been mentioned in private conversation while the latter was an inmate of his

[20] Monroe to Madison, January 20, 1796, Writings of Monroe, 2, 440–47.

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house.[21] This last statement was an admission that Monroe had been indiscreet in expressing his opinion, and that Paine could, if he would, publish matters that would have been very detrimental to him. Monroe's anxiety in regard to Paine was not altogether ill-founded, as the erratic author had already written a letter to Washington which was most insulting in its terms and which accused the President of treachery in not having rescued him from prison. A statement in this communication that, upon the representations of Monroe, Paine had not sent a former letter to Washington, cleared Monroe entirely from all blame.[22] Madison wrote that Monroe should not fear that he would be involved, even though Paine had written to the President.[23]

The testimony of all these letters brought as evidence in answer to Harper's charges shows that Monroe was not hostile to Washington, and that he had endeavored to uphold the respect due the President, not only as a patriot, but also as the American executive. In attending the Fourth of July banquet in his official capacity as minister from the United States, Monroe was indiscreet, unless he had been certain that all due respect would be paid to the American government. When the misunderstanding did arise, his displeasure should have been expressed in unmistakable terms. In admitting Paine to his house Monroe was guilty of another grave indiscretion. While the testimony shows that he did all in his power to stop the publication of any article by Paine detrimental to the government, his own admission proves that Monroe was not so discreet in private conversation with this well-known enemy of the President. Monroe's greatest mistake arose from his too kind heart which had prompted him to help Paine in his distress. Paine could have easily been aided until he was well enough to leave the city, but no minister could afford to have such a man as a member of his household.

Aside from the testimony brought forward in rebuttal of

[21] Monroe to Madison, July 5, 1796, Writings of Monroe, 3, 19–27.
[22] Thos. Paine to Washington, September 20, 1795, Washington Papers, 82.
[23] Madison to Monroe, April 7, 1796, Madison Papers, 5, no. 115.

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these charges against Monroe, the character of the author, Robert Goodloe Harper, tends to weaken their force. An ardent Federalist, and a member of Congress from South Carolina, he was described in a confidential letter from Pierce Butler to Madison as generous and honorable, though impressionable and liable to be carried away by the emotions of the moment.[24] This estimate is confirmed by a careful examination of an address to his constituents on the dispute between the United States and France. This speech, which was printed in London in pamphlet form, takes a most extreme view of the insincerity of the French protestations of friendship. So one-sided are the arguments that the publisher, after pointing out several fallacies, appended Monroe's view in order, as he says, to give a just estimate of the question.[25] Yet the conclusion is inevitable that, although Robert Goodloe Harper's statements were undoubtedly exaggerated, they must have had at least a substratum of truth.

In order to defend his reputation from the numerous calumnies that had been brought up by the Federalists, Monroe determined to publish in full his correspondence with the Department of State during his mission. Writing to him in regard to this proposed defense, Robert R. Livingston praised Monroe's courage in undertaking a mission which he himself had refused from an unwillingness to place himself in the power of a man who would ruin his reputation. Doubtless this is an allusion to Hamilton, who was believed by many of the Anti-Federalists to have instigated all the abuse of Monroe, though there is no definite proof of the charge. Livingston advised Monroe to avoid giving the pamphlet the form of a defense. He considered that the public were disposed to believe that, through the connivance of the administration, improper sacrifices had been made to Great Britain, and that the engagements with France had been violated under pretense of a neutrality. Livingston

[24] Pierce Butler to Madison, January 23, 1795, Madison Papers, 20, no. 79.

[25] Observations on the Dispute between the United States and France, R. G. Harper, Philanthropic Press, London, 1797.

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advised Monroe that the moment was most propitious to confirm this opinion, provided the evidences of duplicity on the part of the administration were in his possession.[26] Above all, he should make his personal interests secondary and be careful not to depreciate Washington. Jefferson, also, advised Monroe to avoid any inculpation of Washington in his book, nor should he revive the old cry of attempting to distinguish between the government and the people.[27]

Following somewhat the conservative lines laid down by Livingston and Jefferson, Monroe published his pamphlet under the comprehensive title: "A View of the Conduct of the Executive in the Foreign Affairs of the United States as connected with the Mission to the French Republic during the years 1794–96." Reviewing his course during the entire mission, Monroe replies to the various accusations that had been made against him. Most of these arguments have already been presented. The policy of the administration toward France is summarized under fourteen heads. This succinct and important account gives in epitome the substance of the View. The mistakes of the administration as Monroe gives them in this summary were:

1. The appointment of a minister (Morris) at the beginning of the French Revolution who was a well-known royalist partisan.

2. The continuance of such a minister in office until France had set aside several articles of the treaty.

3. His removal solely upon the demand of the French government.

4. The appointment of Monroe after his public denunciation in the Senate of the Jay and Morris missions.

5. The instructions to Monroe, which, while not positively denying Jay's powers to negotiate a commercial treaty, implied none. This was done, Monroe asserted, not upon the French demand, but merely to promote tranquillity.

[26] Robert R. Livingston to Monroe, July 23, 1797, Monroe Papers, 8, 1019.

[27] Thos. Jefferson to Monroe, October 25, 1797, Jefferson Papers, Series 1, Vol. 7, 180.

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6. The documents that were given to Monroe to prove the strong attachment of the administration for France.

7. The resentment of the administration upon their publication.

8. The approbation of the administration when Monroe pressed the demands for a redress of commercial grievances and its silence when France showed an opposite tendency.

9. The granting of power to Jay, during the war between France and England, to conclude a commercial treaty with the latter, while no similar steps were taken with regard to the former power and overtures for this purpose were coldly received.

10. A great mistake was made in withholding from Monroe the contents of the Jay treaty until after its ratification by the Senate. This exposed Monroe to much personal embarrassment in view of the explanation of the motives that produced the treaty which he had given the French government by order of the administration. Monroe considers this a conclusive proof that the department did not deal fairly with him from the beginning.

11. Monroe claims that the submission of the treaty to Adet after it had been clear that ratification was intended was done, not to get the French minister's consent, but to uphold the conduct of the administration.

12. Monroe condemns the treaty itself.

13. Since its ratification, the conduct of the executive toward France has been constantly irritable.

14. Monroe's recall when he had succeeded in quieting the French government was a bad political move.[28]

In the library at Mount Vernon a copy of Monroe's View with marginal notes by Washington was found. Washington takes up especially the fourteen mistakes there enumerated. As presenting the controversy from the President's point of view, these comments are especially important.

The first of the charges is answered only partially. Since the French government was a monarchy when Morris was appointed Washington claims that the political views of

[28] Writings of Monroe, 3, 450–51.

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the minister were of little importance. Washington proceeds to enlarge upon the zeal and high character of Morris, but makes no comment upon the second and third points in Monroe's arraignment. Washington's entire comments on these first three charges confirm the view that Morris was retained as long as possible by the administration, and that Monroe's appointment was a matter of necessity to keep the peace with France.

Washington does not consider at all the fourth charge, the alleged mistake made in the appointment of Monroe despite his well-known views in opposition to the policies of the administration. Instead he indulges in some biting sarcasm at Monroe's expense, averring that he was not aware that Monroe was one of the leaders of the Senate at the time of his appointment.

The most important of these marginal notes refers to the Jay treaty and to the consequent trouble with France. Meeting the fifth charge, that Monroe's instructions as to the Jay mission were misleading, Washington begs the question by declaring that France had no right to review the private instructions to Jay, an American minister. Indeed, he blames Monroe for his stupidity in misconstruing the part of his instructions which related to the Jay mission. Randolph's statements show that in this instance Washington's prejudice against Monroe had blinded him to the fact that the instructions had been misleading if taken literally, and apparently were so intentionally.

In reply to the sixth charge Washington claims that the documents given Monroe attesting the friendship of the United States for France were sincere, and that no departure from the sentiments therein expressed can be shown.

As to the seventh charge of resentment for so public a presentation of the letters from Congress, Washington rightly claims that Monroe's action was not only unnecessary, but that it was also impolitic. If the neutrality of the United States was to be preserved, it was not best to present these resolutions with so much éclat. Washington

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enlarges upon this view in criticising another part of Monroe's pamphlet.

Reviewing the eighth charge, Washington asserts that it was not necessary to express approbation for the mere performance of one's duty. Although nothing can be said against this rather frigid statement, a little encouragement would have been most welcome to Monroe in the midst of the difficulties under which he labored. But Washington goes farther in saying that, if any benefit had come from the offers of aid in the negotiations with Algiers and Spain, it would have been promptly acknowledged. This last statement is hardly in accordance with the facts. Effective aid had been rendered, but evidently the fact had been carefully concealed from the President.

The reply to the ninth charge is most effective and reasonable. Washington upholds the right of the United States to send Jay to negotiate a commercial treaty. As advances made to France for the negotiation of a similar treaty had been repulsed, the administration, in Washington's opinion, did not commit a breach of neutrality in entering upon such an engagement with England.

The answer to the tenth criticism is a most just one. Monroe, as Washington asserts, had brought himself into trouble by his own lack of judgment in promising to communicate to the French government the contents of the Jay treaty. The refusal to give him the treaty was, therefore, justifiable.

Washington does not meet the eleventh charge in regard to the submission of the treaty to Adet, merely denying the right of the French minister to review it. It must be confessed that this is a weak defense. If the ratification of the treaty had been decided on, what other object could there have been in submitting the treaty to Adet, as if for his advice, than to delude him into the belief that his opinion would have weight?

In reply to the twelfth charge Washington claims that the French treaty is on its former footing despite the one nego-

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tiated by Jay. He does not attempt, which would have been impossible, to meet the argument that the latter had infringed upon the rules of contraband.

In reply to Monroe's thirteenth charge Washington denies that the conduct of the executive toward France, since the ratification of the Jay treaty, had been irritable, and he calls for proof of such a statement.

On the question of Monroe's recall, Washington indulges in personalities, accusing Monroe of acting as the mere tool of the French government. While asserting that Monroe had been cajoled into the belief that his influence with France was great, Washington does not mention the important aid he had secured in the Spanish and Algerian negotiations, nor that twice he had prevented the despatch of a special envoy to the United States. Elsewhere in these notes on Monroe's View Washington criticises the author as promoting the views of a party which attempted to favor France by obstructing every measure of the administration and by trying to hurry the country into war with Great Britain. In all these notes the mistakes which Monroe made are carefully noticed, while there is no praise for what he actually accomplished.[29]

The pamphlet was widely circulated in the United States. Several letters from leading Anti-Federalists show the approval with which they received it. Thomas Jefferson wrote that it carried instant conviction, and that the facts were unassailable.[30] John Taylor, writing from Richmond, said that the book had been so popular there that it had been almost impossible to obtain a copy. Commenting upon the entire controversy, he blames the constitutional system that allowed Monroe to be sacrificed. Taylor declares that no one could believe that either Monroe's letter to Logan or the notes he scribbled about the affairs of France were at all offensive to the government, nor was it conceivable that his successor could better serve the interests of the United States with the French government. The attempt to do

[29] Washington's Writings, 13, 452–93.
[30] Thos. Jefferson to Monroe, April 5, 1798, Monroe Papers, 8, 1032.

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this, Taylor considered, was Monroe's greatest error. He had failed to distinguish properly between the government and the nation, and had unluckily looked into his instructions for the true purpose of his mission. Therefore, Taylor concluded that Monroe had been sacrificed as an example to teach diplomats the distinction between the public good and the will of the government. This last assertion was probably true. Therein lay the real reason for all Monroe's mistakes and, therefore, for his recall.[81]

The publication of Monroe's View was the signal for another outburst of Federalist accusations levelled against him. Under the nom de plume of "Scipio," Uriah Tracy, a member of the Senate from Connecticut, published a series of articles in Fenno's Gazette which, in the opinion of Pickering, fully met all of Monroe's arguments.[82] These articles, which were afterward collected and printed in pamphlet form, may perhaps be termed the Federalist manifesto on Monroe's mission. The author takes an extreme view, roundly scoring Monroe for the errors of judgment he may have committed. The old accusation that Monroe represented the French party in the United States rather than the administration was revived. Altogether, Tracy makes no allowance for the possible good that Monroe may have accomplished in his mission.[83] At first Monroe planned to answer an attack which was so full of personal abuse, but he finally concluded that it was more dignified to remain silent, and to let his own pamphlet speak for him.[84] Jefferson, who supported him in this decision, did not consider an attack so obviously prejudiced as that of Scipio worthy of serious attention, nor did he consider that it had exerted any great influence.[85]

Besides these articles against Monroe in the public press,

[81] John Taylor to Monroe, March 25, 1798, Monroe Papers, 8, 1030.
[82] Timothy Pickering to Washington, January 20, 1798, Washington Papers, 86.
[83] Scipio's Reflections on Monroe's View, Boston, 1798.
[84] Monroe to Thos. Jefferson, March 26, 1798, Writings of Monroe, 3, 106–15.
[85] Thos. Jefferson to Monroe, April 5, 1798, Jefferson Papers, Series 1, Vol. 7, no. 222.

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many leading Federalists expressed in private conversations their opinion of his View. Pickering wrote to Washington that, like Randolph's Vindication, Monroe's defense condemned itself. Pickering called to Washington's attention an extract from La Gazette Nationale of Paris which the American minister at Lisbon had sent him. The editor of the paper, in reviewing Monroe's View, declared that his demand for the reasons of his recall could not have been granted without putting the government at the mercy of its agents.[36] Certainly according to modern diplomatic usage this latter point was well taken. Oliver Wolcott hysterically termed Monroe's book "a wicked misrepresentation of facts," and declared that his conduct was detested by all good men. He hardly considered that it would make any impression in regard to the character and merits of the administration "beyond the circle of Tom Paine's admirers."[37] James McHenry echoed Wolcott's partisan opinion, declaring that Monroe's defense had been little read, and that it had made no converts to his party. As a consequence he believed that the author had greatly sunk in popular opinion.[38] John Adams even went so far in his hostility to Monroe as to write a bitterly scathing letter to one of the signers of the farewell address sent to Monroe upon his recall by the Americans then resident in Paris.[39]

Perhaps the most conservative view of the whole affair by a contemporary who was intimately acquainted with the facts is that given by John Quincy Adams in his Life of Monroe. He considers that Monroe had endeavored to be consistent with his instructions in his attitude toward France, while Jay had tried to follow the same course in England. An inevitable conflict arose from the fact that they represented opposite parties. Under the circumstances it was

[36] Timothy Pickering to Washington, January 20, 1798, Washington Papers, 86.
[37] Oliver Wolcott to Washington, January 30, 1798, Washington Papers, 86.
[38] James McHenry to Washington, February 1, 1798, Washington Papers, 86.
[39] Jno. Adams, to J. M. Forbes, February 6, 1798, Works of Jno. Adams, 8, 505.

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hardly possible for Monroe to perform his duties to the full satisfaction of an administration in which the Federalist influence was predominant. Monroe had, therefore, felt himself compelled to come before the public with a defense. Adams considers that the publication of the View did not injure Monroe's reputation, and that in after years he came to forget the bitterness of party strife, recognizing the greatness of Washington and the merits of his old enemy, Jay.[40]

The difficulty of Washington's position in trying to keep peace between the Anti-Federalist and the Federalist parties and to avert war by the appointment of Monroe and of Jay seems to have been fully appreciated at the time. That Washington almost certainly had not been a party to Randolph's deception of Monroe as to the Jay treaty has already been shown. His motives in sending Monroe and Jay seem to have been fairly estimated in both France and England. In the French State Papers is found a summary of the conduct of the American government toward France from 1789 to 1797. This paper declares that Monroe had been appointed as a well-known friend to France in recognition of the recall of Genet. It also releases Washington from all blame for the deceiving of Monroe and, incidentally, of the French minister as to Jay's real powers. Finally, the author declares that the President, who had tried to keep the peace between the two parties, was so harassed by false representations that he recalled Monroe.[41] The statement by Fauchet that Washington had recalled Monroe in order to cast on him the odium of the French enmity that had been incurred is discredited by this paper, which undoubtedly gives the official French version of the matter.[42] The British representatives to the United States, Hammond and Bond, both held the opinion that Washington's motive in appointing Monroe was to send a minister acceptable to

[40] Lives of Jas. Madison and Jas. Monroe, J. Q. Adams, 249–52.

[41] Observations on the Conduct of the Government of the United States toward France from 1789 to 1797, by M. Otto, Henry Adams Collection, Adet, 1795–97.

[42] A Sketch of the Present State of our Political Relations with the United States of America, Jos. Fauchet, tr. Philadelphia, 1797.

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France in order to keep the peace.[48] The conclusion, in view of all this evidence, is that the French and British views, which were practically the same, were true, and that Washington, in sending Monroe to France, had earnestly sought to avoid a war.

A curious paper in Monroe's own handwriting which has been preserved in his correspondence contains his observations on the reasons that induced the House of Representatives to ratify the Jay treaty. The merchants and the government, he considered, favored it. The House feared that the failure of the British government to carry out in full the treaty of 1783 and the continued seizures would be ascribed to non-ratification of the Jay treaty, and that, consequently, they would receive all the blame. Also, the members opposed to the Jay treaty probably apprehended that, if they refused their assent, the President and the Senate might push the treaty at the risk of civil strife. The success of the administration under such conditions would have proved fatal to the Republican party, although the first large vote in the House had shown their strength. Moreover, Monroe declared that it was the policy of England to separate the United States and France. Whether she would carry out the Jay treaty was uncertain; it was possible that she was only temporizing and did not really intend to execute it. Above all, Monroe held that, if the United States stood well with France, the object of England would be defeated, for in his opinion, in proportion as the good understanding between these countries was diminished, the views of England would be promoted. Monroe then recounts his several efforts to conciliate France. If, he avers, the treaty with Spain had been accomplished wholly with the aid of France, the President could hardly have ratified the Jay treaty. Monroe, therefore, presents these views and expressly declares that he has already thoroughly discussed the matter with the Minister of Foreign Affairs.

[48] Hammond to Grenville, May 27, 1794; Bond to Grenville, January 22, 1796; Henry Adams Collection, Hammond, 1793–94; Bond, 1795–96.

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France, Monroe concludes, should show specifically where the Jay treaty interfered with her engagements with the United States. Unless this is done, she should preserve the friendship between the two nations. Though the United States is now in a weak condition, Monroe is assured that the country is expanding into a power of the first order and will eventually repay England for the indignities thrust upon her. This document shows plainly Monroe's predilection for the French alliance. It would imply, from the context, that the views herein expressed had been given to the French Minister of Foreign Affairs as well. Indeed, the internal evidence of the undated document would seem to prove that it was intended for French perusal. If so, it was a distinct breach of confidence, and presents a most important testimony that Monroe, in his zeal for peace with France, had far overstepped the bounds of propriety, and was even advising the French government what steps to take in opposition to the American administration, emphasizing as he had the position of the House as the representative distinctly of the popular will.[44]

In summing up the aspects of the mission of Monroe to France, it cannot be denied that, despite mistakes, he had endeavored to forward the objects for which he was sent. This study has shown that Monroe accomplished almost all of the matters set forth in his instructions.

He secured the recall of the French decree which had operated so harmfully against American commerce. The list of vessels that suffered under the operation of this decree shows the importance of this service. While he did not secure immediate payment, Monroe received a promise that France would settle for the damages already inflicted upon American commerce.

Monroe had protected the interests of American citizens in France, protesting when the least injustice had been shown them. As a guarantee of American interests, he had tried to make the consular service as efficient as possible.

Monroe's aid had proved most efficient in securing the

[44] Monroe Papers, I, 9.

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treaties with Algiers and Spain, especially with the latter, where French aid was of very great importance. The evidence shows that it is is very doubtful if these treaties would have been successfully negotiated had Monroe not used his influence with France.

Most important of all, Monroe had succeeded in keeping the peace with France through a most critical period. Assured that the United States had already deceived them as to Jay's real powers, the continued secrecy of the provisions of the Jay treaty strengthened the suspicions of the French officials. Nevertheless, on at least two occasions Monroe by his representations prevented the despatch of a special envoy to protest against the Jay treaty. Such a mission would undoubtedly have produced much harm, and might possibly have led to war. The attitude adopted by the French government after his recall shows how effective his personal representations had been in preserving the friendship for the United States.

Monroe failed to carry out one of the chief points of his instructions. Instead of denying all reports of two parties in the United States, one in favor of France and the other, as exemplified in the executive policy, opposing an alliance with that country, Monroe had posed as the representative of the American people in opposition to the government. Yet this attitude does not appear to have been an intentional one. It was a blunder arising from Monroe's lack of judgment and his too impulsive wish for a closer union between the United States and France. Frank himself to a fault, Monroe had a mistaken idea of what diplomatic candor implied. His correspondence with friends in America and his ardent friendship for France had placed him before the French government as the representative of the American people rather than of the administration.

The American administration had not been wholly blameless. After Monroe had once been appointed to the mission to France he should have been treated with perfect confidence. The full extent of Jay's powers had been concealed

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from him, and he had been made the means of carrying out this deception upon the French government. The Secretary of State's own admission shows that this deception on his part was intentional. Such action, together with the studied indifference to which Monroe was subsequently subjected, naturally threw him into the arms of his friends, the opponents of the administration.

The conclusion of the whole matter is that mistakes were made by both Monroe and the administration, but both, from their respective points of view, had acted with the best intentions. With American commerce continually subject to depredations, the United States was obliged to make a peace with both Great Britain and France that would put an end to spoliations, or else to go to war. Knowing how unpopular the Jay treaty would be, the administration sought to conceal its provisions until it had been ratified, justifying the means by the end in view—the safety of American commerce. Monroe appears to have been most conscientious in trying to do his duty as he conceived it. That he accomplished the greater part of the objects of his mission cannot be denied. His mistakes are to be ascribed rather to lack of judgment than to any intention of wrongdoing.

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PART II

BY

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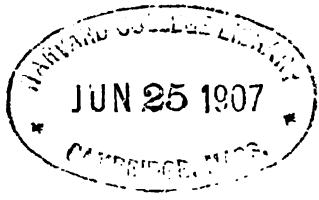

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MARYLAND DURING THE ENGLISH CIVIL WARS. PART II.

The former part of this monograph, published in the last number of the Studies for 1906, discussed events occurring in Maryland from the beginning of the period of the English Civil Wars down to the close of the difficulties between Lord Baltimore and the Jesuits. The narrative is now taken up with the events of the year 1643, and soon brings us to the appearance of Richard Ingle in Provincial affairs.

Relations with New England.

In the summer of 1642[1] Neale went to Boston with two pinnaces containing corn from Calvert. He was commissioned to buy mares and sheep, but had nothing to pay for them except bills drawn on Baltimore, and no one would deal with him. "One of his vessels was so eaten with worms that he was forced to leave her." In spite of this, in May, 1643, Cuthbert Fenwick was commissioned to go out with the *Thomas* to New England and "to require seamen and others to be obedient and respective."[2] On this trip, doubtless, Baltimore's letter was carried to Captain Gibbons of Boston, offering land, "free liberty of religion and all other privileges which the place afforded" to the Massachusetts men, "they paying such annual rent as should be agreed upon," but no one, as Governor Winthrop wrote, had "temptation that way."[3]

A year later[4] a pinnace, sent from Boston for trade on the Delaware River, reported "that the Swedes would not let them trade, but that they were not so narrowly watched but

[1] 2 Winthrop's N. E., 72. Neill, Beginnings of Md., 42.
[2] 4 Md. Arch., Prov. Ct., 204.
[3] 2 Winthrop's N. E., 148. Gibbons removed to Md. in 1650.
[4] Hubbard's N. E., 443.

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that they found opportunity to trade on Maryland side." This phrase is important, as it shows that Baltimore's claims to the west bank of the Delaware were recognized in 1644.

More Indian Alarms.

On January 17, 1642-3, Calvert issued a proclamation[1] to put the colony in safety not only from danger, but even from fear of the Indians, and announced that he was about to send messengers to the neighboring Indians to warn them against coming near the English for the present, on peril of their lives, if they came by land or water between the Patuxent and the Potomac. If they had business with Calvert, they must bring an Englishman with them, or bear a "flag or fane of white fustian with his Lordship's arms in wax, ensealed thereon." Any other Indians entering the English pale after six days and not yielding themselves on demand to the English might be killed with impunity. On January 23 Cornwallis was commissioned to lead an expedition against the Susquehannocks, with all the powers of a captain-general, and a proclamation was issued calling for volunteers, who should be paid with the "purchase" or booty of the expedition.[2] The clearing of ground for the cultivation of tobacco and corn rendered the late winter and early spring of great importance to the planters, so that they were averse to leaving home to attack Indians. Nego-

[1] 3 Md. Arch., Coun., 126. A proclamation was prepared, but never published, that as the people feared a great charge this year in making a march or in guarding against the Indians, "to the foreslowing of their usual diligence and alacrity in proceeding in their labors for the next crop," Calvert would furnish the country with ammunition, and the charge of any expedition or outguards should be borne by Baltimore ["and such others as may be able or willing to contribute thereto;" this clause is omitted in the later proclamation] without charging the country more than to furnish soldiers to make the march or to serve as outguards, and that any march which might be necessary should be laid so as to be no considerable hindrance to the crops of those who went on it. All men were required to have their guns fixed and all other things ready to be "disposed of for the service and safety of the country." The proclamation of the 23d was modelled on this, and added that Calvert would try to have creditors forbear suing this year any of their debtors who should volunteer to march.

[2] 2 Bozman, 249; 3 Md. Arch., Coun., 128.

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tiations were also taken up at this time with the Nanticokes, and on the twenty-sixth Calvert modified his earlier proclamations and declared that no Englishman might shoot any Indian unless the latter were a known Susquehannock or Wicomese, or unless the Indian first assaulted him, or put him in "bodily fear of his life." Harboring Indians without especial license was forbidden, and a truce of six weeks was declared with the Nanticokes.[3] Under pretence of this truce some of the St. Mary's men planned to go over to the Eastern Shore to trade, and Calvert prohibited their going without a license. The Susquehannock expedition did not start. Possibly there was difficulty in obtaining volunteers, and at any rate, on April 8, it was finally given up.[4]

Miscellaneous Events of 1642–3.

On April 11, 1643, Calvert appointed[1] Giles Brent "Lieutenant General, Chancellor, Admiral, Chief, Captain, Magistrate, and Commander, as well by sea as by land, of this Province of Maryland and of the islands to the same belonging," with as full powers as Baltimore's commission gave his governor, and, within a week from that time, Calvert had left the Province for England. Before he left he exempted Nathaniel Pope and his nine menial servants from watching, mustering, and marching unless Pope consented. Quite possibly Pope was left in charge of Baltimore's farm land.[2] The Province was growing. Cornwallis had taken up four thousand acres of land beyond Port Tobacco Creek, in March, 1642.[3] To prevent an ill practice which had arisen, Calvert issued another proclamation[4] on the eve of

[3] 3 Md. Arch., Coun., 128. Some "reasons and accidents" had happened since the seventeenth. 2 Bozman, 250, thinks friendly Indians may have been killed. The reopening of negotiations with the Nanticokes seems sufficient explanation.

[4] 3 Md. Arch., Coun., 130.

[1] 3 Md. Arch., Coun., 130.

[2] 2 Bozman, 253, seems to take an unnecessarily harsh view of Calvert's act in thus exempting Pope. The Governor and his apprentices were exempt by the act of the last session.

[3] 2 Bozman, 247.

[4] 3 Md. Arch., Coun., 129; 2 Bozman, 250.

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his departure. Men had received warrants for the quantity of land to which they were entitled and had seated themselves thereon, without troubling to take a grant or patent, by which neglect the title to the land might become doubtful and Baltimore would assuredly lose his rents. To prevent this in future, all persons claiming lands were directed to take out patents for them within twelve months of the time when their right accrued.[5]

Brent and Neale were both added to the Council. The former took the oath of Governor from Lewger, swearing to defend Baltimore's rights and to do justice to all the planters, and Neale took the Councilor's oath from Brent.[6] The vessel sailed and the Province lost Leonard Calvert's guidance for over a year. The records of the Provincial court are quite full during the period from the adjournment of the Assembly[7] in September, 1642, to Calvert's departure for Europe in April, 1643. On September 26 the sheriff was ordered to bring before the Governor a man, "lately come from Virginia, to show cause why he should not be

[5] Kilty, Landholder's Assistant, pp. 66, 70, 78, gives records of transportation of servants and grants of land therefor. He also (p. 73) shows how the early land system had been formulated, with a public officer authorized to issue warrants of survey on the filing of claim for them, the rights being stated. The warrant directed another officer to lay out the land and return a certificate of survey, on receipt of which a grant, or patent, for the land was issued to the applicant. Kilty (p. 210) refers to an interesting early practice in the surrender of land to the Proprietary for the use of another and the regrant of it to that other. Land was given in that way by Randoll Revell to Jane Cockshot.

[6] Cornwallis's name is omitted, I am inclined to think, by a copyist's error. No salvo of any allegiance to England occurs in Brent's oath; Neale's oath was in the form prescribed in the bill which did not pass the Assembly of 1638. 3 Md. Arch., Coun., 131; 1 Md. Arch., Ass., 45.

[7] On Dec. 16, 1642, Calvert summoned "all freemen" to appear personally or by proxy at St. Mary's on Feb. 3; but, two days before that time, he issued a proclamation discharging all men from attendance. 1 Md. Arch., Ass., 201. On March 28, 1643, Calvert, in like manner, summoned "all freemen" to appear at St. Mary's on April 3. This session seems not to have been held. Bacon gives the date as 1643, the record in 1 Md. Arch., Ass., 201, says 1642. It seems probable that Leonard Calvert would have summoned an Assembly prior to his departure for Europe in April, 1643 (3 Md. Arch., Coun., 136), and Brent and Blount were not Councilors in 1642.

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returned"[8] thither. Another extradition case, in October, concerned a man charged with breaking prison in the neighboring colony.[9]

We have seen how the poorer planters had already begun to mortgage their crops in advance, to obtain wherewithal to live till the crops should be marketable, and cases of debt for such advances, etc., were very frequent.[10] While the leading men, like Gerard and Lewger, often brought suit, we also find lesser men as plaintiffs, such as John Wortly, John Hallowes or Hollis, and Robert Nichols. We also find a complaint against a man for leaving service before his term expired;[11] another was not allowed to leave the Province until he had given security to pay any judgment which might be given against him;[12] against the debts due to a third attachments were laid;[13] a fourth sued for "diet" he gave a man and a woman,[14] and a fifth, because a covenant to deliver him a good breeding sow in payment for three months' work was not fulfilled by Mr. Gerard.[15] In this last case the defendant denied that he so covenanted, but said that he agreed to give a "young sow ready to pig or pigs by her side," which he had tendered the plaintiff, and the court dismissed the case.[16] The procedure of English law was followed and many of the suits were probably compromised, as no final disposition of them is found. At the Provincial Court in November a number of licenses were issued to kill unmarked swine[17] running wild in "his Lord-

[8] 4 Md. Arch., Prov. Ct., 125, 126. Neither seems to have been returned to Va.

[9] This man was also sued for debt.

[10] The court sat almost daily during October. 4 Md. Arch., Prov. Ct., 125, 126, 133–135 (Hardwick v. Allen, 146, 157, 158; Hollis v. Nevill, 136, 142, 143, 152; Wayvill v. Edwards, 135, 157).

[11] 4 Md. Arch., Prov. Ct., 126, 128, 155, 157, 162, 192. Execution upon the person of a servant for the debts of his master was awarded, op. cit., 138; also against the person of a man who had no property, 155, 156, 162.

[12] 4 Md. Arch., Prov. Ct., 127.

[13] 4 Md. Arch., Prov. Ct., 139, 140, 172; property attached must not be paid away, 145, 147.

[14] 4 Md. Arch., Prov. Ct., 128, 156.

[15] 4 Md. Arch., Prov. Ct., 135, 143.

[16] 4 Md. Arch., Prov. Ct., 144, 157.

[17] 4 Md. Arch., Prov. Ct., 139, 142–151, 163, 165, 182, 207, Thomas Hebden was fined in June, 1644, for killing swine unlawfully.

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ship's Forest," the two ears and the skin betwixt them of each animal killed being brought to the Governor within a month after the killing. An inquest was held on the body of Anne Thompson, infant, who was held to have come to a natural death. On the nineteenth of November a suit for slander was docketed, but I do not find that it came to trial.[18] Two days later we find record of an appeal[19] from a judgment of the Kent County court.[20] On the same day Cyprian Thorowgood, late sheriff of St. Mary's, was sued for letting a debtor,[21] who had been arrested, escape from his custody.[22] Trespass, on a man's "tenement at Porkhall," by killing one man's steer calf[23] and by killing another's marked swine in his Lordship's forests,[24] also came before the court. The last case was brought by Captain Cornwallis and the testimony is interesting, as it shows the details of the three or four days' hunting trips for wild swine;[25] these trips must have been common, from the number of permits granted. In this month of November the varied jurisdiction of the court is further shown by a prayer that no patent be granted one man for land which another claimed, and by complaints that one man detained another's clothing, and that a woman did the same for one of her own sex.[26]

In December we find George Binx recovering a sum due for physic,[27] and other suits were brought for taking a man's boat from the landing place, and for the price of a

[18] 4 Md. Arch., Prov. Ct., 150, Thomas Boys was alleged to have called Restituta Hollis (wife of John) a whore.

[19] 4 Md. Arch., Prov. Ct., 150, 185, 193, 215 (Thos. Cooper's estate).

[20] Apparently a case arising in Kent might receive original trial in the Provincial Court, if there were no court held shortly in Kent; 4 Md. Arch., Prov. Ct., 151.

[21] 4 Md. Arch., Prov. Ct., 150, 161, 163–165, 172.

[22] Thorowgood admitted this and alleged that Neale promised to save him harmless. Neale paid and attached the debtor's goods.

[23] 4 Md. Arch., Prov. Ct., 143.

[24] 4 Md. Arch., Prov. Ct., 152, 153.

[25] 4 Md. Arch., Prov. Ct., 167, 170, 174. For a similar suit see p. 154. In January suit was brought for trespass in killing swine, op. cit., 174, 176.

[26] 4 Md. Arch., Prov. Ct., 153, 154.

[27] 4 Md. Arch., Prov. Ct., 155, 159.

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tenement at the fort which Calvert took away from the purchaser.

On the very last day of the year 1642, Thomas White was tried by the court for enticing[28] Michael Hacker, a "maid-servant of Jane Cockshot (widow)," to run away from her mistress and into Virginia, and being found guilty, he was condemned to be whipped with thirty stripes and "imprisoned until he put in security to the value of 1000 lbs. tobacco not to depart unlawfully from the Province."

Early in January Nicholas Harvey was ordered[29] to turn over to the sheriff all the things he took from Chapoy Senim (an Indian name) and his company, and to appear before the Governor to receive fitting order touching "the late accident," when he shot at the Indians and killed one of them. Later in the month John Robinson, the barber, John Elkin, and Robinson's servant, Miles Richards, were summoned[30] to explain why they killed the Indian King of Yaocomoco. A grand jury of twelve indicted them on February 1. Elkin shot the Indian, on January 22, at an Indian quarter in the woods near St. George's Creek, and the others were accused of being accomplices. Elkin admitted the killing, but the jury brought in a verdict of not guilty, because they understood the act not to have been committed against his Lordship's peace or the King's, because the party was a pagan and because they had no precedent in the neighboring colony of Virginia to make such acts murder. Calvert told them that the tribe to which the dead man belonged was at peace, and that "they ought not to take notice of what other colonies did, but of the law of England," and sent them back to "consider better" of their opinion. When they came out again they said "guilty of murder in his own defence." They were again sent back, being told that this verdict "implied a contradiction," and then brought in a third verdict that "he killed the Indian in his own defence." Calvert "willed" that the verdict be not entered, but that

[28] 4 Md. Arch., Prov. Ct., 165. He did not ask for a jury.
[29] 4 Md. Arch., Prov. Ct., 166.
[30] 4 Md. Arch., Prov. Ct., 173, 174, 177, 180, 181, 183, 188.

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another jury be called. On February 9 the case was heard by a new jury,[31] and a verdict of guilty of manslaughter was brought in. The former jury was then informed against by Lewger, who asked that they be fined. A test case was made of George Pye, one of the members, who was fined two thousand pounds of tobacco. Lewger stated that when Calvert "importunately" pressed the jury to proceed according to the evidence, Pye insolently replied to the whole court, "If an Englishman had been killed by the Indians, there would not have been so much words made of it." Pye denied the words, but Greene swore to them, and the court fined Pye one thousand pounds of tobacco. I find no proceedings against the other members.[32]

In January Calvert had a curious deposition entered on the records that an indentured servant[33] of Francis Gray's had covenanted to serve the Governor from the time of his being free from Gray in that month until the next Christmas, and to "do all his labors, except beating bread," and, if he should be ill longer than a fortnight, to make up the time at the end of his service. For this service Calvert agreed to pay three barrels of corn, fifteen hundred pounds of tobacco, and a waistcoat. Langford alleged that Francis Gray had contracted to build "300 feet of housing at Piney Neck" within three months and had not done so.[34] Gray denied the contract, and alleged that Langford owed him for carpenter's work and for his servant's labor, and won his case. On February 1, in another suit against Langford, Calvert and Lewger judged that Langford should pay one hundred pounds of tobacco for non-performance of a bargain to deliver a flock bed and a rug, or should deliver one of the beds

[31] One of its members had served on the Grand Jury. The prisoner challenged, peremptorily, two men on the panel. One of those challenged was Greene.

[32] 4 Md. Arch., Prov. Ct., 166.

[33] Richard Browne. See similar agreement made by John Hilliard and John Hollis. 4 Md. Arch., Prov. Ct., 173, 174.

[34] 4 Md. Arch., Prov. Ct., 175, 182, 197, 200. Specific performance is asked by Robert Nichols, on Jan. 17, of a bargain made by Thos. Allen of twenty days' work for so much work lent him in the crop last summer, and the court so decreed it; op. cit., 172.

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that the men lay on at Piney Neck.[35] Colonel Trafford, who had left Maryland, was the defendant in January in suits by Dr. Binx for physic given his servants,[36] by Brent for "transportation of 3 of his men from Virginia last year," and by others. Fugitives continually caused trouble. In January Gerard demanded six hundred pounds of tobacco from William Cook, and Neale, who was Gerard's attorney, sued Randoll Revell[37] in February for carrying Cook out of the Province, after he had been put in the sheriff's custody. Revell put in the plea that he did not carry Cook out of Maryland "to convey him out of the Province," but carried him out and returned him again, so that the plaintiff was not damaged, but the court thought otherwise and gave judgment against Revell. John Angud had died, leaving Calvert his administrator, and, on October 11, 1641, John Hollis had recovered from the estate "4 good wild kine with calf." The petitioner found a pinnace but no kine in the estate.[38] Therefore, he came, on February 1, 1642–3, and asked that the value of the cattle be paid him in tobacco, as had been done in a similar case.[39] Two other men now came and said that they also recovered a judgment of thirty-five shillings sterling against Angud's estate, but it contained no specie, so they asked to be given tobacco. Calvert agreed to these requests. Hollis asked that the kine be valued at five thousand pounds of tobacco, alleging that he paid Angud four thousand pounds for them and before delivery sold them to John Medley, who recovered from Hollis the cattle or the five thousand pounds,[40] so that Hollis had to procure the cattle at once at excessive rates. Lewger and Langford, sitting as the court,[41] agreed with him. They

[35] 4 Md. Arch., Prov. Ct., 176.

[36] 4 Md. Arch., Prov. Ct., 169–172, 195, 197, 198. Deposition about the Colonel's corn, 171. One of the Colonel's men was Antonia de Leymos, a Portuguese, p. 171. Daniel Scoffin was claimed as one of his men.

[37] 4 Md. Arch., Prov. Ct., 170, 184, 193.

[38] 4 Md. Arch., Prov. Ct., 175, 176. No will is extant but the term is often used loosely, 273, 280. A chattel mortgage of a cow is recorded on Feb. 2; op. cit., 178.

[39] Record of it lost, as it is of Hollis's judgment.

[40] One hundred pounds of beaver is an equivalent.

[41] The one concerned, Calvert, did not sit as judge.

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also valued the specie debt at two hundred pounds and ordered that the administrator should pay these sums, as far as he could, from the unadministered portion of the estate.[42]

A second case of slander, in which a woman had been charged with unchastity and theft, was tried on February 13,[43] and the slanderer was ordered to ask public forgiveness in court, pay the woman one thousand pounds of tobacco, and be imprisoned in irons until he paid. The only other cases of interest in February were one for delivery of three servants, alleged to be mortgaged for a sum the defendant failed to pay;[44] another brought by a man for a debt due his wife's first husband, of whose estate she was executrix; a third, in which the sheriff sued a man for fees of imprisonment; a fourth, in which Lewger sued Brent because the latter had failed to carry out a written covenant to discharge Lewger of a bill of eight thousand pounds of tobacco due Richard Ingle; and a fifth, in which Lewger sued a man for carrying off two hogsheads of his tobacco the year before.

On March 1 John Hollis was cautioned to observe the proclamation about trading with Indians.[45] On the same day a jury of twelve men presented eight men as fugitives for debts, and proclamation was made that those claiming the fugitives' estates should enter their claims at once.[46] Concerning William Hawkins, one of these fugitives, we have an interesting case.[47] Hawkins had agreed to buy Walter Beane's house, but had not paid for it, nor received

[42] There were several difficulties about Angud's estate, especially because he failed to transport three cattle of Thomas Boys from Va., for which task Boys had given him a note; 4 Md. Arch., Prov. Ct., 177–179, 187, 188. Hampton had lent him a dog, when he went to the Susquehannocks, and sued for its value; op. cit., 180.

[43] 4 Md. Arch., Prov. Ct., 181–183.

[44] 4 Md. Arch., Prov. Ct., 184–187. The way in which the Court followed English forms of procedure may be well seen in the case of Brough v. Dandy, op. cit., 186, 187, 194, 215, 253.

[45] 4 Md. Arch., Prov. Ct., 186.

[46] 4 Md. Arch., Prov. Ct., 187, 188, 212. Two of these were the accomplices in the case of the slain Indian.

[47] 4 Md. Arch., Prov. Ct., 187, 188, 195. A suit for a debt between Marmaduke Snow and Fulke Brent lasted for some time; op. cit., 192, 228, 229, 269, 335. 10 Md. Arch., Prov. Ct., 94.

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possession as owner, but only as tenant. The sheriff entered upon the property as Hawkins's, whereupon Beane sued the sheriff for trespass. The court dismissed the suit, but restored the property to Beane until paid for. Beane forgot himself in his excitement and swore by God in the presence of the court, for which he was fined five pounds of tobacco.[48]

On March 6 Richard Ingle appears for the first time in the court[49] and demands a debt from Cockshot's estate. A day later Calvert has an interesting deed of land recorded selling his manors[50] of St. Michael, St. Gabriel and Trinity,[51] agreeing withal to finish his house at Piney Neck with a brick chimney containing two flues in the center, a partition by the chimney, doors, and windows, and brick or stone underpinning. In return for this, John Skinner bargains to deliver, within a year, fourteen negro slaves and three negro women slaves, between sixteen and twenty-six years of age, "able and sound in body and limb," brought "within the Capes," *i. e.*, probably from Africa. It is too bad that we have to link the name of the Province's first Governor with the first recorded importation of negro slaves.[52]

Thomas Greene, the first person of standing to marry in the Province, filed a marriage bond for his wedding with Millicent Browne[53] in April, and in the early part of this month such minor matters came before the court as a suit for the price of a boat;[54] a pass for a man to go to Eng-

[48] 4 Md. Arch., Prov. Ct., 188.
[49] 4 Md. Arch., Prov. Ct., 189.
[50] On the St. Mary's County manors, see Thomas's Chronicles of Col. Md., 288.
[51] Warrant issued on March 14 to his Lordship's tenants in Whitcliffe Creek to pay rent at West St. Mary's before Lady's Day on pain of distress. 4 Md. Arch., Prov. Ct., 191.
[52] On the eighth we have the sale of the time of an indentured maid-servant recorded, and on the eleventh a mortgage of a black cow. 4 Md. Arch., Prov. Ct., 190. An indentured man-servant, whose master claimed five years' service from him while the man said only four were due, was brought before the court in March; op. cit., 195, 205.
[53] 4 Md. Arch., Prov. Ct., 192.
[54] 4 Md. Arch., Prov. Ct., 173, 193.

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land,[55] as another man assumed to pay his debts; a suit for the freight of a ketch, which Cornwallis hired from Lewger but found "insufficient;"[56] a demand for beaver due on suretyship, which beaver the plaintiff recovered on oath later in the year "upon the refusal of the defendant to wage" his oath;[57] a suit by Cornwallis against John Mottram, who had agreed to be answerable for all persons exported from the Province in Mr. Givin's pinnace,[58] which pinnace had carried off one of the captain's debtors; an accusation made by Brent, but not proved, that Vaughan, while acting as his attorney, had injured him by receiving unmerchantable tobacco for his use. Brent himself was accused by Cornwallis of having shipped in Ingle's[59] ship, on Cornwallis's account, tobacco which was not "merchantable sound tobacco" as Brent was bound to send by "factorage." Brent replied that he used "a moral diligence and care in the receiving Cornwallis's" tobaccos in the same manner and degree as he did for his own, and that further he was not bound. On April 12, 1643, only Brent, Lewger, and Neale sat as court, Calvert having returned to England.

Brent's Governorship and His Susquehannock Expedition.

Brent and Cornwallis had headed the opposition in the last General Assembly and Cornwallis had refused to take the Councilor's oath, yet now they were in control. Although Brent was the cause of the failure of the expedition against the Susquehannocks in September, 1642, he now planned

[55] 4 Md. Arch., Prov. Ct., 194.

[56] 4 Md. Arch., Prov. Ct., 196, 197. The court awarded Lewger the case. He had sworn that he hired her as she was, but that she was sufficient.

[57] 4 Md. Arch., Prov. Ct., 197.

[58] 4 Md. Arch., Prov. Ct., 198. A man from Kent, who sued another from that county in the Provincial Court, said he had been from home and should be "in his return" two weeks more; op. cit., 199, 200.

[59] Ingle on April 12 sued Nicholas Causin for debt; 4 Md. Arch., Prov. Ct., 197, 203. The day Calvert departed, Ingle swore before him that Samuel Langridge of London had refused to pay a bill of exchange which Mrs. Brent had given Ingle during the last year.

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another expedition,[1] and on April 17 appointed Cornwallis to be "Commander of the County of St. Mary's for all military affairs" and to be Captain General of the proposed expedition. This expedition against "those barbarous and inhumane pagans" was to follow the requirements of the act of September, 1642. At first, Cornwallis was authorized to take every third man able to bear arms; then it was thought that the business could be carried on by volunteers; and, finally, it was felt impossible to make the march at that time, and the Council voted to raise a company of ten "choice shot" instead, who should "seat and fortify upon Palmer's Island" in the Susquehanna under Brent's direction.[2] It is probable that a fort was then built. I think this was Fort Conquest, for whose support a contribution was promised by a number of planters, some of whom failed to fulfill their pledges and were sued therefor.[3] As soon as the expedition was mooted, Brent directed Thomas Baldridge to inspect the arms in St. Michael's hundred and James Neale to do the same in St. Clement's hundred.

The affair was only postponed. On July 18 Cornwallis was authorized to "levy soldiers and all other means necessary, by way of press, according to the law" of September, 1642, and, about that time, James Cauther was directed to go out against the Eastern Shore Indians, who were in St. Mary's County, and, as they had made no satisfaction for their past outrages, to expel or vanquish and put them to death and pillage their goods. He might then pursue them to the Eastern Shore and carry on the war till he obtained peace.[4] Whether he went forth we know not,[5] but Cornwallis undoubtedly made an expedition, for an assessment to pay therefor, of four thousand pounds of tobacco, was

[1] 3 Md. Arch., Coun., 132, 133, 134.
[2] 2 Bozman, 279. 3 Md. Arch., Coun., 150.
[3] 4 Md. Arch., Prov. Ct., 230, 249, 250, 275, 360, 361 (suit by Edward Parker, sheriff, against T. Weston's estate).
[4] 2 Bozman, 260. 3 Md. Arch., Coun., 137. Probably the truce with the Nanticokes had not led to a treaty.
[5] 4 Md. Arch., Prov. Ct., 244. Thos. Sterman had a boat pressed by Cornwallis at Kent in September, 1643.

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laid by the Council that year upon fifty-five taxpayers[6] of St. Mary's. The expedition was unsuccessful and two field pieces were lost to the Indians, as well as several guns and other goods. James Cauther had a company in the expedition, and when his executor sued for his wages[7] Brent replied that the bill ought not to be allowed, because he brought away his company before the time appointed him and performed not his duty. The author who wrote under the name of Plantagenet[8] gives some account of this expedition which, though doubtless garbled, has a probable basis of fact. He accuses the Swedes of having "hired out 3 soldiers to the Susquehannocks who taught them the use of our arms" and marched with them into Virginia, whence they carried the King of Potomac prisoner. From Maryland they expelled nine Indian nations, "civilized and subject to the English crown." These statements show the kind of reports that went from man to man. He thinks that of the Susquehannocks there are in 1646 "not now of their naturals left above 110, though with their forced auxiliaries, the Thonadoes and Wicomeses, they can make 250, these together are counted valiant and terrible to other cowardly, dull Indians, which they beat with sight of guns only; but, in truth, meeting with English are the basest cowards of all, though cunning and subtile to entrap and

[6] T. Weston was assessed 1000 pounds. 3 Md. Arch., Coun., 138, 146, 149; cf. 4 Md. Arch., Prov. Ct., 216; execution was awarded on Dec. 30, but Weston's servant refused to open his house that it might be collected. On July 18 the sheriff was authorized to demand that the servant deliver the goods or open the door, and if he refused to do either, to open the house and serve the execution (op. cit., 282; vide 228. 3 Md. Arch., Coun., 134). Isaac Edwards was also sued, 4 Md. Arch., Prov. Ct., 235, and Thos. Sterman, who said that the condition of the contribution of May 2, 1643, was not fulfilled, viz., that the hundred should not be molested any more that year for any service for the colony against which covenant service had been set. Brent replied that the condition was that no tax be set and none had been set. Gerard was also sued therefor, pp. 236, 248. Robert Sedgrave and Henry James said they consented to the contribution, on the promise that there should be no marches that year, but later they were called out against the Susquehannocks; op. cit., 249. The court gave judgment in every case. Francis Gray was sued; p. 290.

[7] 4 Md. Arch., Prov. Ct., 228.

[8] New Albion, pp. 19, 24.

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surprise on all straits, coverts, reeds, and ambushes. For at the last Maryland march against them these 250, having surprised in the reeds and killed three Englishmen with the loss of one of theirs, Capt. Cornwallis, that noble, right valiant, and politic soldier, losing but one man more, killed with 53 of his and but raw and tired Marylanders, 29 Indians as they confessed, though compassed round with 250." Plantagenet also tells of an exploit which occurred in the summer, in which exploit Captain Lewis of Maryland "at the Coves, drawing but 20 men out of his wind-bound sloops and 2 small cockboats," found "24 canoes and therein 140 Susquehannocks, reduced by these 3 Swedes into a half moon, with intent to encompass the 1st small boat before the 2nd could reach the former. At the 1st volley of 10 shot and loss of 1 Indian they run all away."

International relations for Maryland begin with the letter which Brent sent the Governor of New Netherland, in consequence of the flight of certain servants who were thought to have gone from Maryland into the other Province. Brent wrote that "justice and fair correspondence" should exist between "two governments so nearly bordering and which are shortly like to be nearer neighbors in Delaware Bay," and he asked that the Dutch remand to Maryland all its runaway apprentice servants who come to them, and compel freemen who fly thither without a pass, "being indebted or otherwise obnoxious to the justice of this place, to make such satisfaction" as the Dutch "shall find justice to require." The like "help and concurrence" from the Maryland government was promised. The letter was sent probably because word had come to Maryland that the three Irish fugitive debtors of whom we have spoken had fled to New Amsterdam and remained there.[9]

It was always found impossible to prevent the white men from selling guns to the Indians, and the French and Dutch traders, as well as the English, were sources of supply for the Maryland Indians.[10] To prevent any great number of

[9] 4 Md. Arch., Prov. Ct., 204.
[10] 3 Md. Arch., Coun., 143, 144.

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guns from coming into Indians' hands, on January 2, 1644, the Council prohibited any one from lending or delivering to an Indian either a gun or ammunition without a license, and it summoned a jury of inquest to present violators of this order. Lewger and Neale at once took out a license for their Indian man to carry a gun. On February 1, 1643–4, Cornwallis demanded in the Provincial court a gun which Henry Lee took from his servant. Lee replied that he took the gun from an unlicensed Indian, and asked successfully that he might have it for his pains.[11]

On March 19, 1643–4, Brainthwait succeeded Cornwallis as captain of the St. Mary's Militia.[12] About that time Brent gave the Indian friends notice not to approach the plantations on the Patuxent, where the people were far from other plantations, scattered and continually exposed to danger, one of these plantations having been nearly cut off in 1643. Until May 25 the people on the Patuxent, on the approach[13] of any Indian, were to bid the Indian depart and warn him that, if he did not depart, they would shoot him. If the Indian did not go instantly, the planter was authorized to shoot him, and after May 25 the friendly Indians would have been notified, so that the planter might shoot without warning. On June 8 Brent gave a letter of protection to "Peter Mimascave or Nicoatucen,[14] an Indian of Patuxent, and all other Indians of that town and nation," who were "to be treated and used with all humanity as friends and confederates." All planters were warned on their peril not to injure any of these Indians, unless they "put you in fear of your lives, by repairing to any of your houses and plantations in numbers, lurking and in suspi-

[11] 4 Md. Arch., Prov. Ct., 235. J. Hollis was told he must explain why he gave an Indian a gun; p. 259.

[12] 3 Md. Arch., Coun., 146. Edward Parker was recommissioned as sheriff of that county in the fall of 1643; p. 137. Cornwallis was sentenced to imprisonment, but was released, as he expected to leave the country. 4 Md. Arch., Prov. Ct., 265.

[13] 3 Md. Arch., Coun., 146.

[14] 4 Md. Arch., Prov. Ct., 280. On June 12, 1644, a case concerning a canoe between this Indian, called Nicotamen, and an Englishman was docketed.

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cious manner, without showing a pass under the great seal."[15]

Lewger's Instructions to Fleet.

In June[1] Brent must have left St. Mary's for a time, during which Lewger received news from Piscataway that some of "our enemies, the Susquehannocks," were expected there, "under color to treat and conclude a peace with them and us; but, perhaps, to confederate and unite all the Indians of these parts in some general league plot for the cutting off of the English in Maryland, as they have most savagely attempted in Virginia." To prevent danger from this conference, Lewger thought it well to have an Englishman present, "to direct and overrule it, if need be, to countenance and strengthen our friends that yet remain and terrify the others and to proceed with the Susquehannock agents, either in hostility or truce, as there shall be most cause and reason." For this ambassador Lewger could think of none so acceptable as Captain Henry Fleet, from his "skill in the Indian language and long conversation and experience in the Indian affairs," as well as from his prudence. Lewger, therefore, issued him a commission, to which was signed Brent's name, to go with twenty or more armed Englishmen to Piscataway and there to proceed according to his instructions. He was given power to press men for the expedition and to command them, even to the inflicting of death on the disobedient. If he found the "best reasons persuade to peace" with the Susquehannocks, he was authorized to make a treaty, a truce being declared in the mean time, and to give such hostages in exchange as would accompany the Indians. During the truce they must give hostages[2] or other security not to harm or to come within the territory of the Maryland planters or of their confederates, in which number the Potomac Indians were counted. The Susquehannocks must give satisfaction for robbing Angud once and Mattapany house twice, espe-

[15] 3 Md. Arch., Coun., 148.

[1] 2 Bozman, 275. 3 Md. Arch., Coun., 148.

[2] Of course a safe conduct was to be given their official messengers. The form of it is given. 3 Md. Arch., Coun., 150.

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cially returning the arms then taken, or an equivalent number; Fleet must also get back as many as possible of the "arms and other goods lost or left in our last march upon them," and must obtain some present to the Governor, as well as any other conditions he thought fit for the honor and safety of Maryland or its confederates, including the Virginians. He might insinuate, "the better to endear our peace" to them, that the hostages of both sides would quickly become interpreters between the two peoples, and then the Maryland men "will be willing to come and live among them and to aid them against their enemies, as now we do the Piscataways." If Fleet deemed it not wise to make peace or truce, he might pillage, take or kill the Susquehannocks, break off all league and treaty between them and "our confederates," and terrify the latter from "leaguing or treating with the common enemy" without the consent of the Marylanders and of the queen of the Piscataways,[3] who resided at St. Mary's. This was a wide discretion given Fleet, and that he might not abuse it Lewger directed him to advise with Gerard and Neale, who were Councilors, and with Fenwick, Baldridge, Pope, and Price of the planters. At least two must be consulted on every point and one of the Councilors must be of the number.[4]

Brent was much offended that Lewger had taken this authority and had issued the commission in Brent's name, and on August 26 suspended him from the office of Councilor and from his judgeship in St. Mary's, and appointed Brainthwait, Greene, and Fenwick as commissioners to hold court there. This suspension seems to have lasted only until Calvert's return to the Province early in September.

Baltimore's Instructions to Brent and the Affairs of the Secular Priests.

In August, 1642, hostilities between Charles I and his Parliament began, and Leonard Calvert landed in England

[3] I. e., Mary Kittamaquund.
[4] 3 Md. Arch., Coun., 151.

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in time to see the King's court fixed at Oxford and Rupert storm Bristol in July. Baltimore was with the King[1] that summer, and Leonard Calvert told his brother many things we should like to know as to the condition of Maryland. Baltimore intended, for a time, to come over to America in the autumn, and so, by letter to the Council[2] dated July 14, he suspended the grants of lands until his arrival.[3] In this communication, which he directs Brent to have recorded and published, Baltimore confirms Calvert's appointment of Brent to be Lieutenant General until Calvert return or the Proprietary grant another commission. However, he withholds from Brent the power of assenting to laws passed by any future Assembly and disassents to any laws enacted by any Assembly[4] since Calvert left. Calvert, Lewger, and Langford, before the first left the Province, bought the "chapel[5] of St. Mary's and the other buildings and land belonging thereunto, using the name of Cornwallis as the vendor," although the said purchase was not made from him, and drew three bills of exchange on Baltimore for £200 sterling, which bills Baltimore "thought fit not to accept" by "reason of some mistakes in that business." Two other bills of exchange, signed by Cornwallis, for payment to Leonard Calvert of £30 and £10 respectively, were protested by the men on whom they were drawn. On all these bills "true right and justice can not be done" without some English testimony, so that Baltimore directs Brent not to allow any steps to be taken concerning them until Baltimore arrive, when the Proprietary will do equal right. This letter[6] was published in Maryland on December 23,

[1] 2 Bozman, 265.
[2] 3 Md. Arch., Coun., 135.
[3] 3 Md. Arch., Coun., 100, 114.
[4] There had been none.
[5] This was mixed up with the Jesuit question. Davis's Day-Star, p. 33, thinks this chapel was jointly erected by Protestants and Roman Catholics, was the one whose key Gerard seized (vide 2 Bozman, 263), and that about it the Roman Catholics were buried; cf. will of John Lloyd of St. Mary's, a Roman Catholic, who in his will, made in 1658, expressed the wish to be interred "in the ordinary burying place in St. Mary's Chapel-yard."
[6] 3 Md. Arch., Coun., 135.

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1643, but before that time matters wore so grave an aspect in England that Baltimore had to give up his plan to visit his colony. On November 2 the Earl of Warwick[7] was appointed by Parliament governor in chief of the American colonies and given a council to assist him. In governing and preserving the plantations and advancing the true Protestant religion therein, they were given authority to appoint and remove governors and other officers. It was uncertain whether they would meddle with Maryland or not. The war clouds grew ever blacker at home, so Baltimore must stay, and, for some reason, Leonard Calvert also determined to stay a while longer in England. Consequently, on November 17 and 18, 1643, from Bristol, the Proprietary sent Brent four communications.[8] The first of these was an appointment as Councilor of Thomas Gerard, of whose good affection, fidelity, and more than ordinary ability Leonard Calvert had spoken. Before the commission reached Maryland, on February 3, at St. John's, Gerard had been sworn in as Councilor,[9] Brent having appointed him by virtue of a clause in some lost instructions of the Proprietary, dated October 20, 1642, which authorized the Governor to name a new Councilor whenever the number was reduced to less than three by death or absence. The oath of fidelity taken by Gerard contained no reference to allegiance to the crown, but contained a clause, added on account of the land controversy with the Jesuits, that he would not take land from the Indians or from any person holding it without a grant from the Proprietary, unless he took it for the use of the Proprietary.

The second of Baltimore's letters to Brent[10] gave him power to assent to any laws passed by an Assembly, and to grant lands on the same conditions as Leonard Calvert could. The third document was a commission to Brent, Lewger, Neale, Gerard, and Brainthwait to be commission-

[7] 2 Bozman, 265.
[8] 3 Md. Arch., Coun., 138.
[9] 3 Md. Arch., Coun., 144. Of those nominated in April, 1643, Trafford had gone.
[10] 3 Md. Arch., Coun., 139.

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ers of the Proprietary's treasury. They succeeded others, whose names are to us unknown, who had previously been appointed to order and dispose of his Lordship's cattle and goods[11] and "of all rents, fines, confiscations, or escheats, tribute, or other gifts from the Indians, customs or subsidies, granted to me by any General Assembly." They should manage, clear and let such farms or manors set out for the Proprietary's especial use as he should give orders from time to time. At least two of these commissioners, of whom Brent must be one, must agree in the care of this property, and they might appoint and dismiss officers to care for it and might fix their wages. The commissioners had full powers, sending an annual account of their proceedings to Baltimore. The last document of the four contained the instructions given these commissioners. They must make an inventory of the cattle[12] and other goods and chattels, and prepare a rent roll, and send them to England. Rev. Mr. Gilmett was to be allowed by them to continue his custody of those goods of Baltimore's as long as he staid in Maryland, but he must give a written itemized acknowledgment of them. The Proprietary's carpenters and other apprentice servants must be sold at once, for Baltimore intended, for the future, to hire servants and pay them wages, rather than have apprentices and send them out supplies. Brent and Gilmett were to receive each two steers yearly from his Lordship's stock for their trouble, and Lewger was to be given the same, with the addition of twenty barrels of corn from the quit rents and the use of six milch kine. He must pay for the kine's keep, however, rear their calves until weaned, and then deliver them to be put with the other cattle of the Proprietary on his farm at West St. Mary's. Brent should also receive one half of all fines, confiscations, wrecks, tribute from the Indians, customs, and other gifts from the Assemblies. The commissioners must pay any obligations left by Leonard Calvert

[11] 3 Md. Arch., Coun., 140. Some of the former commissioners had left the Province.

[12] They must have the cattle marked.

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in his brother's name, and if necessary sell some of the cattle to do so, but Baltimore wished the commissioners to remember that he was very anxious to have his stock of neat cattle and sheep preserved and increased. Finally, he wished them to try to get Mr. Copley to take back his house and land, and to discharge the bargain made for it, a reasonable consideration being allowed him for Mr. Gilmett's time of occupation. Baltimore was willing to continue to pay a fair rent for the house until midsummer, 1645. This doubtless refers to the adjustment of affairs with the Jesuits and the withdrawal of the secular priests, which occurred about this time. If this arrangement could not be made,[13] he desired some other place to be provided for the diet of Mr. Gilmett and his family and of Mr. Territt, at his expense. He never referred to the fact that they were priests, but asked the commissioners to try to keep these gentlemen in the Province until that time when he hoped to be able to provide better for them "than, by reason of the extremity of the present troubles in England, I could do this year." In May, Lewger, as Baltimore's receiver, filed an account for rents, fines, the price of a heifer, composition for two years' service of a redemptioner and the sale of another, etc.[14] Among the expenses were for Mr. Gilmett's diet, half the fines to Brent, and wages for the "beater for the gang." The commissioners of the treasury also filed an inventory of the furniture and tools, the corn, and livestock. We find there had been one hundred and forty-nine cattle during the year, eleven sheep, of which number the wolves had killed four, and twenty-four swine.

Internal Affairs Under Lieutenant Governor Brent.

The tobacco crop of 1642 was poor,[1] and, to prevent the ships which sailed from Maryland for England in 1643 from

[13] 3 Md. Arch., Coun., 147. The commissioners appointed Brainthwait collector of corn rents in St. Mary's County and Edward Parker collector of other rents, with a ten per cent. commission.
[14] 4 Md. Arch., Prov. Ct., 275, 279.
[1] 3 Md. Arch., Coun., 144.

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wanting cargo, Brent, on January 8, issued a proclamation prohibiting the exportation of tobacco from the Province except in ships coming from England until these ships were fully freighted. In the Provincial court servants' cases were quite prominent[2] during the early days of Giles Brent's administration. Three men, who were alleged to have fled from Captain Fleet's service in Virginia, were sent back thither. Nathaniel Pope[3] petitioned on May 24 that he might have Sir Edmond Plowden's three maid-servants delivered to his custody to carry them to their owner in Virginia. This was refused, as Pope showed no authority to act in the matter and Plowden, on March 26, had given a power of attorney to Brent. The latter had gone to Kent, so Lewger and Neale, sitting as the court, said that they would do justice for Sir Edmond whensoever the servants should be lawfully demanded.

On July 17, William Eltonhead swore that Jane and Eleanor Stevenson,[4] during June, 1642, in London, contracted with Plowden to serve him for five years in New Albion, in Delaware Bay. These maid-servants were destined to cause Plowden much trouble. In January, 1644, Robert Ellyson, barber chirurgeon, sued[5] him for chirurgery and physic given them during the last summer, and, at the same time, the court adjudged that Anne Fletcher, one of the servants,[6] be put into Brent's hand to be taken to Virginia. There she might satisfy the authorities, if she could, that she was bound only from year to year to serve in New Albion, as a waiting maid to the ladies of Plowden's family; that he had defaulted in paying her wages and insisted on her serving in Virginia, and that she had practi-

[2] 4 Md. Arch., Prov. Ct., 201, 207. Rowland Vaughan was allowed wages out of Col. Trafford's estate.

[3] 4 Md. Arch., Prov. Ct., 205. In Nov., 1643, Cornwallis complained that a servant who had a year or more to serve refused to do so; op. cit., 213.

[4] 4 Md. Arch., Prov. Ct., 210. Eleanor Stevenson married Brainthwait in 1645. He was dead before 1649–50; op. cit., 524.

[5] 4 Md. Arch., Prov. Ct., 215, 229. Lewger would not decide this case in Brent's absence.

[6] 4 Md. Arch., Prov. Ct., 224. She went to Virginia and Dr. Binx sued Cloughton for carrying her from the Province; op. cit., 306.

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cally served a year and so should be free. One of these maids had served Mr. Brent in Kent from May to July, 1643, when she fell lame and returned to St. Mary's. Brent was not able to recover the women for Plowden for want of proofs.[7]

Soon after Calvert left he was sued successfully for a debt, though Peter Draper, whom he had left as his attorney, knew nothing of the "dueness" of the demand.[8] About this time Lewger assigned Cornwallis his freehold of St. John's in payment of a debt of ten thousand pounds of tobacco. Debts were not always paid in tobacco or in beaver. Lewger demanded of Hallowes or Hollis two hundred arms' lengths of roanoke[9] and "satisfaction for pillage taken aboard his ketch." Tobacco was usually sold in the hogshead and was not always "as good below as at the top,"[10] so as to be all merchantable. Transportation of debtors out of the Province, without consent of the creditor, led to suits for damages.[11] Debts were the chief grounds of suit,[12] and were not only for goods and cattle.[13] Draper, in Calvert's name, sued Francis Gray for rent,[14] and William Hardwick, tailor, docketed two suits to recover the amount of bills for clothes.[15] On June 2 Robert Kedger demanded a patent for four hundred acres on Herring Creek, and Thomas Hebden protested that he had previously made choice of part of this land with Calvert's consent and had seated and built a hog-

[7] 4 Md. Arch., Prov. Ct., 358. Probably Anne Fletcher, p. 374. Anne was not the woman who married Ellis Beach; op. cit., 202, 269, 274.

[8] Wm. Lewis recovered of Mrs. Mary Tranton the sum he paid her (six pounds beaver) for certain curtains stolen from her, so that she could not deliver them. 4 Md. Arch., Prov. Ct., 203.

[9] An arm's length of roanoke was worth ten pounds of tobacco, and a pound of beaver, one hundred pounds of tobacco, but it sometimes fell to seventy-two pounds of tobacco. 4 Md. Arch., Prov. Ct., 214, 227.

[10] 4 Md. Arch., Prov. Ct., 205.

[11] 4 Md. Arch., Prov. Ct., 204, 206, 227. Security was sometimes given to induce creditors to consent to debtors' leaving.

[12] 4 Md. Arch., Prov. Ct., 206, 212.

[13] 4 Md. Arch., Prov. Ct., 211, 251.

[14] 4 Md. Arch., Prov. Ct., 208. Two barrels and three bushels of corn and three hens or capons; cf. p. 211.

[15] 4 Md. Arch., Prov. Ct., 212, 213.

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sty upon it.[16] The same Hebden complained of a trespass, in detaining a canoe from him. A deposition of Thomas Yewell was filed to assure the title to a cow which it was alleged that Claiborne had given to one of his servants.

The widow of Roger Oliver demanded[17] some of her husband's possessions from three men, and this demand shows us one of the forgotten tragedies of the early settlement, for, on July 10, Hollis testified that he was on the deck of a vessel when Thomas Boys called him to help Oliver. Leaping down into the hold he saw Oliver struggling with an Indian; Oliver knocked the Indian on the head with the barrel of a gun and then fell dead with a wound in his throat made by the Indian with a Dutch knife. Other Indians were in the hold, and Hollis felt in peril of his life.

The Protested Bills of Exchange.

On December 30, 1643, Peter Draper, Calvert's attorney, swore[1] that he had a letter from Leonard Calvert asking him to demand of Cornwallis £80 for the two smaller bills of exchange protested in England, whose sum was £40. Cornwallis replied, when Draper[2] told him of Calvert's message, "I will give you no more answer to it, but that there is more due me." On January 3, 1643–4, Cornwallis came before the court, then composed of Brent, Lewger and Neale, and complained that Calvert, Lewger, and Langford in April previous had drawn three bills of exchange on Baltimore for £200; Thomas Gerard of Staples Inn had shown one of these bills to Baltimore, who refused to accept it, and it was protested, wherefore Cornwallis as assignee sued Calvert's estate for £400 sterling. Brent asked his associates whether process could be given in this case, in view of Baltimore's letter of July. Lewger answered, "I ought not to give any judgment, being myself a party to

[16] 4 Md. Arch., Prov. Ct., 206, 209.
[17] 4 Md. Arch., Prov. Ct., 209.
[1] 4 Md. Arch., Prov. Ct., 216, 217.
[2] As to Draper's power of attorney, see 4 Md. Arch., Prov. Ct., 252. He refused a hogshead of tobacco from Pope, pp. 253, 270; see 254, 259.

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it;" Brent then demanded the opinion of both associates, in virtue of their official oaths. Lewger then said that in the absence of the Proprietary, the Lieutenant General and Council, by law of the Province[3] not disassented to by the Proprietary, were judge in all causes for which no certain rule was, and the commission of Giles Brent as Lieutenant General could not hinder him from doing justice according to that law, and, therefore, process should be allowed. Neale thought Brent's power of hearing this cause was taken away and that nothing should be done until Baltimore gave further order. Brent thereupon reviewed his gubernatorial oath and declared that, as neither the "law of the Province nor the office of Lieutenancy" was abrogated or restrained, he must grant process, and so the writ was issued to the sheriff. Draper, on February 1, brought a countersuit as Calvert's attorney against Cornwallis for two hundred and ninety-six pounds of tobacco, but the court dismissed the charge, as Cornwallis proved that the sum had been paid.[4]

Four days later Cornwallis in court tendered Draper satisfaction for the smaller bills of exchange[5] out of the £200 bill of exchange, and then prosecuted his suit against Calvert and the two Councilors. Lewger answered that he received no satisfaction, nor thing of value for the bill, though he had acknowledged it therein, but took only a house, *i. e.*, the chapel, for Baltimore's use at the price charged, which house Baltimore refused as not "valuably bought," and relinquished to Cornwallis; and so Lewger asked that he be not required to pay.

Brent asked if there was any "reservation in the bargain to relinquish it, if disliked," and as Lewger did not prove this Cornwallis was required to make oath of his damage, and he prayed respite for it. The jury did not agree and were discharged. On March 16 Cornwallis brought up the suit again.[6] Brent and Lewger tendered him the "chapel

[3] 1 Md. Arch., Ass., 83.
[4] 4 Md. Arch., Prov. Ct., 236.
[5] 4 Md. Arch., Prov. Ct., 243.
[6] 4 Md. Arch., Prov. Ct., 263, 264, 267.

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house and appurtenances, in discharge of the bargain," but he refused to accept the offer, making oath that he believed himself damaged forty-eight thousand pounds of tobacco and cash by the non-payment of the bills. The court then granted him judgment to that amount.[7] Cornwallis next demanded of Draper the delivery of the protest of the smaller bills of exchange, as he had tendered Draper full satisfaction by offering to discount them from the judgment debt. On the eighteenth Lewger under oath admitted the purchase of the "Chapel house" and, on the next day, execution was issued against him and sequestration against Calvert and Langford; and, in Baltimore's behalf, Brent relinquished the house and land to Lewger, for the benefit of Calvert and Langford, to indemnify them for the suit. After Calvert's return, on January 7, 1644–5, he demanded twenty thousand pounds of tobacco and cash for protest of the smaller bills.[8] Three days later Fenwick, as Cornwallis's attorney, asked that Calvert pay one hundred thousand pounds of tobacco[9] and cash, as damages for the protest of the large bill, and Brent sent the petition to Calvert, asking that he pay or show the Council, at once, why he should not. Calvert bluntly replied that he was not bound to show cause and would not. On the thirteenth Fenwick asked attachment against Calvert,[10] which was given him. Parker, the sheriff, refused to serve the writ and Brent appointed Thomas Matthews to do so. On January 15, 1643–4, Brent had complained against Calvert[11] because he had paid for his manor, containing Kent Fort, the mill, and other housing, but Calvert had delayed to secure to him the bargain.

Draper died in the spring of 1644 and William Harrington,[12] who had been an indentured servant of Calvert, recovered the wages and clothes promised him from the

[7] 4 Md. Arch., Prov. Ct., 265.
[8] 4 Md. Arch., Prov. Ct., 292.
[9] The sum has been more than doubled since the former judgment.
[10] 4 Md. Arch., Prov. Ct., 294.
[11] 4 Md. Arch., Prov. Ct., 221.
[12] 4 Md. Arch., Prov. Ct., 271. He had worked for Mr. Gilmett; vide pp. 270, 273, 280–282, 284, 303, 307.

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Governor's estate. Edward Parker seems now to have been recognized as Calvert's agent.[13] We learn from a suit for an accounting that Draper had been "selling earthenware for tobacco with great profit."

On March 14, 1643–4, Mrs. Brent for her Indian ward, Mary Kittamaquund, "the young empress," sued Calvert's estate[14] for seven thousand pounds of tobacco, for the price of eleven cattle due from Calvert, who had been the Indian girl's guardian. Attachment was accordingly laid, and Cornwallis said in open court, "It was done to defraud me of my right to the tobacco, which will be sent home to Leonard Calvert." Lewger, as the Proprietary's attorney, at once complained of this, alleging that Cornwallis referred to the attachment. This he denied, saying he referred to the petition, but Brent sentenced him to imprisonment without bail for three weeks. "After taking notice of his occasions to England, however, he released the imprisonment."[15] Cornwallis took ship to England with Ingle, who on his arrival in England gave testimony[16] before a Parliamentary committee of "his good affection to the Parliament and his great sufferings for that cause." In May the commissioners of the treasury recorded on the court records the transfer of this cattle to Mary Kittamaquund and of others to Lewger and Gerard.[17]

Cornwallis and Ingle.

In the month of January, 1643–4, begin the troubles with Richard Ingle.[1] On the eighteenth William Hardwick, the

[13] 4 Md. Arch., Prov. Ct., 273. Another sued to recover wages for work on Calvert's vessel, the *Recovery*.

[14] 4 Md. Arch., Prov. Ct., 259, 263, 265, 270, 388.

[15] 4 Md. Arch., Prov. Ct., 265. Cornwallis left the Province, making his servant Fenwick his attorney, in April; op. cit., 270. He was sued for a cow and calf in May; op. cit., 272. On July 24, 1644, Richard Bennett gave Fenwick a receipt in payment for two negroes sold to Cornwallis; op. cit., 304.

[16] 3 Md. Arch., Coun., 167.

[17] 4 Md. Arch., Prov. Ct., 270, 272, 273, 274. At this time a cow claimed both by Mrs. Brent and by Sterman was sequestered by the court and finally given Sterman.

[1] 4 Md. Arch., Prov. Ct., 231, 232. Ingle was from Redriff, Surrey; op. cit., 238.

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tailor, was given by Brent, with Lewger's advice, a warrant to arrest Ingle for high treason, and Cornwallis was asked to help in the seizure and to keep the matter secret. Hardwick had informed against Ingle, and he went on board Ingle's ship, the *Reformation,* which lay at anchor in St. George's River, and seized the ship and goods. Brent put a guard of thirty men[2] on board, under command of John Hampton, with express orders not to let Ingle come aboard without Brent's warrant. Ingle had then been arrested, and most of the crew were ashore cutting wood or doing other work. Brent offered those on board an oath to be true to King Charles, and when they refused to take it he drank a health "to the King sans Parliament," and, turning to John Durford, told him, "You shall be master of the *Reformation* and carry her to England," to which Durford answered, "I shall do nothing without Ingle's consent."

Richard Garrett, or Jarrett, the vessel's quartermaster, and Durford's brother, William, who dwelt in Maryland, were about to go aboard the *Reformation* when they were met on St. Inigoes Point by Cornwallis and others and were compelled to go to Brent's house, where they were detained for an hour. After this time they went on board with Cornwallis and found the ship under guard. After nightfall Parker, the sheriff, Cornwallis,[3] and Neale, without Brent's consent, carried Ingle on board and persuaded Hampton to discharge and disarm the guard, saying, "All is peace."[4] Ingle therefore took the guards' arms, possessed himself again of the ship, and escaped. For this rescue Parker was at once removed from his shrievalty and Dr. Ellyson appointed his successor. Ingle was called upon, by procla-

[2] It was later alleged that Brent seized on the ship because she was from London, and tampered with the company to go to Bristol, a royalist port, and gave them an oath against Parliament. 3 Md. Arch., Coun., 161.

[3] Cornwallis later said he did this to declare his affection to the Parliament; 3 Md. Arch., Coun., 166. Mary Ford said he and Brent seized the ship; op. cit., 170.

[4] 4 Md. Arch., Prov. Ct., 234, 247; the charge against the two Durfords, Johnson, and Ingle stated that they beat, wounded, and otherwise abused the guard.

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mation, to surrender[5] before February 1, the grand jury was summoned, and Brent appointed Lewger, as attorney general, to prosecute Neale, Cornwallis, Parker, and Hampton. Hardwick gave information that at Kent, about March or April, 1642, and at other times at St. Mary's, he heard Ingle say that he was captain of Gravesend in Kent in the preceding November for the Parliament against the King; that in February, 1641–2, at Accomac, Ingle was commanded in the King's name to come ashore, but refused to do so in the Parliament's name, and, standing with his curtal-ax drawn, said, "I will cut off his head that comes aboard," of which deed Ingle himself told later in Maryland. Hardwick said further that Richard Primer had heard Ingle say, "King Charles is no King." On February 1 the jury was impanelled and chose Robert Vaughan as foreman.[6] Cornwallis excepted to Hardwick's testimony, as he was "infamous," but the court[7] allowed it and swore him, Gerard, and Walter Broadhurst. Lewger then told the jury that they had the right to inquire of treasons done out of Maryland, to learn whether the offender should be sent for trial to England, or where the act was committed, and then the jury was asked to pronounce upon the Accomac incident, the governorship of Gravesend, and his saying on April 5, 1642, on board the *Reformation,* riding at anchor near St. Clement's Island, that "Prince Rupert was a rogue or rascal;" to all of which questions the jury replied, "Ignoramus." A new jury was then impanelled and heard five witnesses, after which it also replied, "Ignoramus," to the question as to whether Ingle broke out of the custody of Sheriff Parker. The first jury was then asked if at Mat-

[5] See Edward Ingle's monograph on Richard Ingle, 19 Md. Hist. Soc. Fund Pubs. He seems to think that there was connivance in Ingle's escape to get rid of a troublesome question. Ingle traded regularly with Maryland. On Oct. 7, 1642, William Peaseley, the Proprietary's brother-in-law, wrote of Ingle's intent to sail from Gravesend shortly in the last ship of the season. Streeter, Md., Two Hundred Years Ago, 33.

[6] 4 Md. Arch., Prov. Ct., 237. Robert Clark fined for non-attendance.

[7] Brent and Lewger.

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tapanient, in St. Clement's hundred, in April, 1643, Ingle said, maliciously and seditiously: "Prince Rupert is Prince traitor and Prince rogue. If I had him aboard the ship I would whip him at the Capstan," and the return, "Ignoramus," was a third time made; but the jury failed to agree as to whether on March 30, 1643, Ingle said, on his ship in St. George's River, "The King is no King, neither will be no King, nor can be no King, unless he join with the Parliament," which words the jury was urged to find to be "intending and conspiring the death and destruction of our Lord the King." Two days later, on Saturday, a third jury was impanelled, containing seven members out of twelve in the first one, and, after hearing one witness, returned, "Ignoramus," to the bill over which the first jury disagreed.[8] Not satisfied with these repeated failures, the court issued a warrant to either Parker or Ellyson to arrest Ingle for high treason,[9] and on the fifth impanelled still a fourth jury, which disagreed as to whether Ingle was proved maliciously and traitorously "to have said, on January 20, 1642–3, on his ship, the *Reformation,* on a voyage across the ocean to Maryland, that 'The King is no King, nor will I acknowledge him for my King longer than he joins with the honorable his house of Parliament.'"

On the eighth Lewger filed formal charges against Hampton, Parker, Neale, Cornwallis, William Durford, John Durford, Frederick Johnson, and Ingle[10] for their part in the "prison break, rescue, misdemeanor, and contempt" which occurred on January 18. He also charged that Ingle, since January 18, in St. George's River, had assaulted Henry Bishop[11] and other peaceful citizens and had taken from them against their will "their vessels, guns, and other goods, and threatened to beat down the dwelling houses of other inhabitants, even of the Governor General,"[12] and so was guilty of "piracy, mutiny, trespass, contempt, and mis-

[8] 4 Md. Arch., Prov. Ct., 241.
[9] 4 Md. Arch., Prov. Ct., 245.
[10] 4 Md. Arch., Prov. Ct., 245.
[11] Bishop was one of the witnesses against Ingle.
[12] 4 Md. Arch., Prov. Ct., 248.

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demeanor." Cornwallis answered to the charge against him that he knew the original charges against Ingle to be of no importance but suggested by Hardwick's malice, which was shown by the grand inquest's failure to find enough probability in the accusations to put Ingle to trial, and that he supposed that Ingle went on board ship with the license and consent of Brent and the Council and the sheriff, and was not accessory to the escape. Brent proposed to postpone judgment "till the return of the ship," but Cornwallis asked a decision without delay, and an interesting point arose. Brent asked Lewger whether the proceedings should be held according to the rule expressed in the Provincial law, "in bar implied to the Law of England," or according to the latter law.[13] Lewger replied that both by the Governor's commission and the Council's oath the procedure must be according to Provincial law. This is an early expression of the dominance of the legislation of the Colonial Assembly when it conflicted with the English law. Brent then heard the whole matter, found Cornwallis to be an accessory to the rescue, and fined him one thousand pounds of tobacco;[14] but, on Cornwallis's petition, he respited the fine[15] for the time being. Neale did not appear,[16] and Brent, who wished to go to Kent, suspended him on February 11 from his membership in the Council, "until he purge himself of the faults charged against him." Ellyson was not satisfactory as sheriff[17] and was discharged from office on the same day, Parker being restored. Lewger filed a new charge[18] against Neale on the fourteenth. This was at once answered by a flat denial,[19] and on March 12 Brent, sitting without a jury,

[13] 4 Md. Arch., Prov. Ct., 249.
[14] 4 Md. Arch., Prov. Ct., 255. On Feb. 29 Brent ordered execution to issue for this amount, and the proceeds to be delivered to John Wyatt, commander of Kent, to pay part of Baltimore's debt to him.
[15] Cornwallis later said this was the greatest fine that could be laid in Maryland. 3 Md. Arch., Coun., 167, 168.
[16] 4 Md. Arch., Prov. Ct., 250.
[17] 4 Md. Arch., Prov. Ct., 254.
[18] 4 Md. Arch., Prov. Ct., 251.
[19] 4 Md. Arch., Prov. Ct., 252.

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dismissed the case in default of proof and reinstated Neale in the Council.[20]

With Ingle, a compromise seems to have been made[21] on February 8. For him to await trial would cause "great demurrage" to his ship and "other damages and encumbrances in the gathering of his debts," so he was allowed to depart from the Province, provided he deposited a barrel of powder and four hundred pounds of shot, as a pledge that he or his attorney would appear at the St. Mary's court within the next year. After this he was permitted to trade freely, and he even received freight of tobacco from Brent and a grant of a certain island to be called Ingle's Island, whither he sent hogs. After enjoying "free trade and commerce," he departed peaceably and quietly, as he afterwards said, "without any show of discontent or dislike at all." On his return to England he requited the favor Cornwallis had shown him by saving from confiscation the goods which belonged to Cornwallis and had been shipped on the *Reformation,* on the ground that, although he was a Papist, he was the means of saving all the ships seized in Maryland, and Ingle was especially beholden to him, as he had saved Ingle's life. Ingle made such representations not only to the officer, who came to the vessel with a warrant, but also to the Committee on Sequestrations at Camden House, and thus secured the goods to their owner.

On March 16 Lewger announced that Ingle had left[22] Maryland without satisfying the said composition, or paying or securing the customs dues, or taking a discharge of his ship, and that he was known to be carrying his ship to London, a port in actual rebellion against the King. He, therefore, asked that all Ingle's "rights, goods and debts" in Maryland be sequestered into his Lordship's hands. This was accordingly done. On the same day Lewger sued Ingle for the price of two pieces of plate and a scimitar

[20] 4 Md. Arch., Prov. Ct., 258.
[21] 4 Md. Arch., Prov. Ct., 251.
[22] 4 Md. Arch., Prov. Ct., 261. He left six hundred pounds of tobacco to pay the fees of Ellyson, the sheriff, for warning the juries and evidences.

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which Ingle bought from him, but for which Ingle failed to pay the price agreed. Cornwallis, on Ingle's behalf, agreed that the latter should return Lewger the value of the plate, and the scimitar or its price, within a year, and so Ingle passes from the scene for a few months.[23]

In November, 1648, Mrs. Brent, as the Proprietary's attorney, demanded of Fenwick, Cornwallis's attorney, half of the forfeiture wherein at St. Inigoes House he assumed that Ingle in May, 1644, should pay the powder and shot to the use of the Province.[24] In the next month Brent sued for the other half of the bond, which he claimed by virtue of Baltimore's grant to him as Governor. Fenwick denied the forfeiture to be due.[25]

Miscellaneous Court Business of 1644.

Among the many suits to pay physicians'[1] and other men's bills brought before the court about this time we find men demanding payment for wages for the washing of linen, for a half share of a plantation, for a sum due from a partner in dissolving a copartnership, for the delivering of crop, for a heifer, for trespasses done by swine, and for roanoke belonging to one man and delivered by an Indian to another.[2] When Binx brought suit for physic against Pope, the latter denied that Binx had fulfilled the conditions of the contract, and when Ellyson sued Harvey for the same cause,[3] the defendant pleaded that the plaintiff relinquished the "cure before it was perfected." The jury, however,

[23] 4 Md. Arch., Prov. Ct., 263, 265. Cornwallis was ordered to deliver to Brent the barrel of powder and 400 pounds of shot or lead undertook for Mr. Ingle to be disposed for common defense.
[24] 4 Md. Arch., Prov. Ct., 438.
[25] 4 Md. Arch., Prov. Ct., 457, 471. On Dec. 20, 1649, a receipt is recorded, given by Frederick Johnson to Nicholas Causin for four hogsheads of tobacco by appointment of Ingle for the use of Thos. Herne; op. cit., 536.
[1] 4 Md. Arch., Prov. Ct., 217, 221, 223, 225, 226. T. Hebden sues Hall for chirurgery of his man's leg done by his wife and for diet, and recovers; op. cit., 244, 256, 268. W. R. Steiner, A Contribution to the History of Medicine in the Province of Md., 1636, 1671; Johns Hopkins Hospital Bulletin, Vol. 13, nos. 137, 138.
[2] 4 Md. Arch., Prov. Ct., 228, 242.
[3] 4 Md. Arch., Prov. Ct., 215, 226, 230, 240.

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found for the physician in the latter case. Brent left St. Mary's in January, giving Lewger a commission to issue and sign ordinary process and to hear any civil cases with liberty of appeal.[4]

During the early months of 1644 there were several miscellaneous cases of interest.[5] William Stone, of Accomac, later to be Governor, by his attorney asked process for a judgment recovered by him in the Kent "County Court" on November 30, 1640. Thomas Bushell complained, in vain, that "Michael Harker, spinster," slandered him by reporting that he said, "I hope there will be ne'er a Papist left in Maryland by May day."[6] Damages were asked for the non-delivery of five barrow shoats and five breeding sows.[7] Thomas Hebden successfully asked patent for seven hundred acres of land, on which he had built and dwelt for four or five years, and which he now wished to sell to John Dandy.[8] John Hollis mortgaged[9] his lands, four milch cows, two steers, three calves and all his swine to Cornwallis, as security for the delivery of two hundred and sixty-seven and three fourths pounds of "good and merchantable winter beaver." A writ was issued against a debtor, who must give security that he would not leave Maryland.[10] John Cage recovered a judgment from Cornwallis for wages and "imprisonment," and Brent one from Hebden for bringing up a canoe from Accomac,[11] and one from Henry Bishop for a grapnel, which belonged to Baltimore as owner of uncertain goods.[12] Brent also fined Robert Ellyson for

[4] 4 Md. Arch., Prov. Ct., 229. Brent was back before Feb. 1; op. cit., 235.

[5] 4 Md. Arch., Prov. Ct., 233, 235, 236.

[6] 4 Md. Arch., Prov. Ct., 234. Mary Edwin soon sued Widow Whitcliff for saying she laid with an Indian for peak or roanoke; op. cit., 258.

[7] 4 Md. Arch., Prov. Ct., 237. A hog was attached; op. cit., 241, 244.

[8] 4 Md. Arch., Prov. Ct., 239.

[9] 4 Md. Arch., Prov. Ct., 242.

[10] 4 Md. Arch., Prov. Ct., 243. Contract to pay fifty dressed skins for three years as price of a release of indenture of service. See suit for trespass for transporting a debtor from Maryland, p. 253.

[11] 4 Md. Arch., Prov. Ct., 244. Copley asked to have his boat returned to him; op. cit., 254.

[12] 4 Md. Arch., Prov. Ct., 248.

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losing, when he was in drink,[13] a gun deposited in his hands, which loss was, doubtless, the reason why Ellyson was discharged of his sheriffwick. Complaint was made by John Nevill of a "forcible entry" into his dwelling house.[14]

On February 24 the sheriff was ordered to remove the public guns and ammunition into a place more secure from surprisal of Indians and to arrest John Dandy for killing an Indian lad. The coroner's jury accused Dandy of shooting the boy. Dandy was tried in March and sentenced to be hanged, but the sentence was commuted and he was made public executioner.[15] He later showed himself especially ready and faithful to Leonard Calvert, and the latter promised to release him from all former penalties, which promise Greene confirmed after Calvert's death.[16] It was a postponement of hanging after all, for Dandy killed a white youth later and was hanged. John Wayvill, an insolvent debtor, on March 8 was committed to the sheriff's custody, to be maintained by his creditor in such necessaries as should be thought fit, the price of which he might add to his account.[17] In June three men were ordered to be arrested for "open rebellion in arms to commit felony in carrying servants out of the Province."[18] About this time Hebden in vain sued Francis Otway, chirurgeon,[19] for not bringing in certain medicines this shipping, as the covenant named no time in which the bargain should be performed. A judgment for the price of a canoe loaned Philip White, mariner, by John Norman and not returned by the former was recovered from him, inasmuch as the plaintiff waged his oath

[13] 4 Md. Arch., Prov. Ct., 249, 250.
[14] 4 Md. Arch., Prov. Ct., 253.
[15] 4 Md. Arch., Prov. Ct., 254, 255, 258, 260, 262. Dandy was ordered to fix a lock in May; op. cit., 274.
[16] 3 Md. Arch., Coun., 187.
[17] 4 Md. Arch., Prov. Ct., 254, 256, 257, vide p. 268, accusation against two men for aiding fugitive servants to escape. A long suit between Fulke Brent and Marmaduke Snow for debt, 192, 229, 269, 270, 335. 10 Md. Arch., Prov. Ct., 97.
[18] 4 Md. Arch., Prov. Ct., 279, 280, for alleged fugitive debtor.
[19] 4 Md. Arch., Prov. Ct., 256. Who was the "old doctor?" p. 259.

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and the defendant refused to do so.[20] On March 20 Brent, who intended to leave St. Mary's for a time, authorized Brainthwait to hear any causes in which Lewger was a party, when no other Councilor was present.[21] In April justice was shown Indians by the issuance of a warrant[22] ordering four men to restore corn and other goods taken from the Patuxent Indians, on sight, or to show cause in court why they should not be fined for their acts.[23] A rumor was falsely spread in June that Copley spoke in "approbation of the Indians' cutting off Virginia."[24] For the rest we find such entries as declaration of intention to marry,[25] an accusation[26] of burglary, a deed of sale of two calves,[27] a bond given by Captain Fleet to Calvert,[28] a debt for a gun, a fishing line and hooks and "drinking tobacco,"[29] and a suit for a shallop lent by Nicholas Causin to Neale and lost by him. We also find the will of Edward Parker, sheriff, who, being about to go to sea in command of Fleet's pinnace to trade with the Dutch, left half of his property to Cicely Lewger,[30] five hundred pounds of tobacco to the chapel and the rest to Elizabeth Speare.

There is spread on the records a covenant[31] given Lewger by one Thomas Todd, on October 24, 1642, in which the

[20] 4 Md. Arch., Prov. Ct., 257. For a rather interesting suit for wages for a servant who worked to make a crop, vide pp. 262, 267, 286. Depositions seem to have been recorded when taken, and the plea of former trial held good; op. cit., 264, 266, 332, 346, 361 (suit for beaver). An acquittance from a bond to pay for a man's freedom is found; op. cit., 268, 269. Newbold's Notes on the Introduction of Equity Jurisdiction into Md. is valuable for its study of early court proceedings.

[21] 4 Md. Arch., Prov. Ct., 267. On June 12 Gerard was commissioned to hear a case concerning the ownership of a canoe claimed by Peter Nicotamen and Robt. Tuttey.

[22] 4 Md. Arch., Prov. Ct., 269.

[23] 4 Md. Arch., Prov. Ct., 280. Trespass done by swine was complained of. As to ownership of a sow, see p. 282.

[24] 4 Md. Arch., Prov. Ct., 279.

[25] 4 Md. Arch., Prov. Ct., 271.

[26] 4 Md. Arch., Prov. Ct., 281.

[27] 4 Md. Arch., Prov. Ct., 284.

[28] 4 Md. Arch., Prov. Ct., 283.

[29] 4 Md. Arch., Prov. Ct., 284.

[30] 4 Md. Arch., Prov. Ct., 73, 281. See Baldwin's Calendar of Wills.

[31] 4 Md. Arch., Prov. Ct., 283.

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latter, for release from service, agreed to dress the forty-six skins then in the lime pit and to make from them twelve pairs of breeches and twelve pairs of gloves by April, and, in every succeeding year during the period in which his service should have endured by the indentures, to pay fifty good dressed skins, of which ten might be fawn skins, to let Lewger have the refusal of all the skins he dressed, and at the end to return Lewger his tools, viz., a stock, a beam knife, and a withe (whittle?).

Governor Calvert's Return.

When Leonard Calvert returned into his Province, in the early autumn of 1644, he brought with him new commissions for himself as Governor[1] and for a Council,[2] consisting of Brent, Lewger, Greene, Gerard, and Neale. Langford, Trafford, and Blount, of the previous Council, were no longer in the Province. Thomas Greene[3] was added for the first time. He had served in the Assembly and was to be Governor later. Lewger was named as attorney general and recommended as judge of causes testamentary and matrimonial and as secretary, John Wyatt was made commander of Kent, and John Abbott and William Cox were appointed commissioners with him. The new commission to the Governor,[4] while quite similar to the former one of 1642, had some important differences. The power of assenting to laws was limited to those made to continue in force until the Proprietary disassented and not to those to continue in force for only a limited time, as for a fixed number of years or until the next Assembly, nor could the Governor assent to any law for the "constitution, confirmation, alteration, or change of any affairs," or to one that might prejudice the Proprietary's royal jurisdictions. In England

[1] 3 Md. Arch., Coun., 151. The complicated question of the dates of the early governors' accession to office and leaving it is discussed by the present author in 22 Pa. Mag., 98. Calvert's royal commission is found in 1 Md. Hist. Mag., 211.
[2] 3 Md. Arch., Coun., 150. 2 Bozman, 281.
[3] Greene took the oath on Nov. 4. 3 Md. Arch., Coun., 160.
[4] 3 Md. Arch., Coun., 154.

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the King could not create offices or annex new fees to old offices; but, by his charter, Baltimore might claim the right to "constitute and ordain" officers. The dispute over the question of temporary and permanent laws now begun was destined to continue as long as Maryland remained a Province, the planters claiming that by the passage of such laws alone could they check the Proprietary, insure frequent summoning of Assemblies, and preserve their rights. Any laws, however, which might be assented to by the Governor should continue in force until Baltimore confirmed or disassented to them. Grants of land were also more carefully guarded. Grantees must take "the oath of fidelity to the Lord Proprietor," and the surveyor must certify on the grant that the land had been surveyed and contained no more than was claimed. Calvert was also excluded from hearing testamentary cases and, in default of statutes of the Province, was empowered to decide to his best discretion (in weighty cases with the agreement of two Councilors) in as ample a manner as Baltimore himself could do. In all these changes we see results of the troubles with the Jesuits and of Baltimore's great confidence in Lewger.

Calvert also brought with him a commission from King Charles, dated January 26, 1643–4, and directing him to go to Virginia and there, with the aid of Governor Berkeley, to seize all ships and other property of "any Londoners whatsoever, or of any of our cities, towns, or places in actual rebellion against us." This power is given inasmuch as the London merchants "drive a great trade in the dominion and colony of Virginia, receiving daily great advantages from thence, which they impiously spend in vast contributions towards the maintenance of an unnatural war." Calvert was also authorized to seize any ship belonging to "any Londoner, or other persons in rebellion," which he might meet on his voyage to America, and was made "Commander in Chief" of the ship in which he sailed, of "all other ships of war" sailing with him, and of the vessels he should capture, with power to govern those on board all

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these vessels by martial law. He was also authorized to enlist in Virginia recruits for the royal army. Half of the proceeds of the seizures should go to Lord Baltimore. The other half should be returned to the King, after paying all expenses and giving £2000 sterling in tobacco to Berkeley. It does not appear that Calvert ever used this commission, but it became known that he had received it and Ingle used this fact against him. The commission, whether by intent or not, referred only to Virginia, and it was a question whether it had force in Maryland. "The first Assembly after Calvert's arrival" was said by Copley and Brent to have "declared that they would have free trade with Londoners and others under the protection of Parliament and that they would not receive any commission to the contrary," and Thomas Copley, or Giles Brent, wrote a letter to Ingle in Calvert's name "signifying the good affections of the inhabitants of Maryland to the Parliament and their desire of free trade with Ingle or other Londoners."

Brainthwait as Governor While Calvert is in Virginia and Claiborne in Maryland.

On September 30 Calvert nominated Brainthwait as Councilor and as his substitute,[1] while he left the Province, probably to go to Virginia. Brainthwait took the oath of Governor on October 3 and that of Councilor on November 2. During Calvert's absence we find few entries on the records. A man who had been pressed by the Governor's warrant to serve in the garrison at Piscataway sued Fleet for wages.[2] There was recorded a deed of sale of a house to Dr. Binx, and Thomas Bushell sued Henry Brooke for not completing a shallop. The garrison at Piscataway, which was established in August, 1644, was continued until January, 1644–5, when order was given to assess the charge of it upon the inhabitants.[3]

[1] 3 Md. Arch., Coun., 160. 4 Md. Arch., Prov. Ct., 286. Why was not Brent named again?
[2] 4 Md. Arch., Prov. Ct., 286, 287.
[3] 3 Md. Arch., Coun., 163.

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It is possible that during his absence in Virginia Calvert "registered, proclaimed, and endeavored to put in execution" the commission from the King.[4] He had another document, however, which will account for his presence in Virginia, namely, an authority from Charles I to treat with the Assembly of that colony for the passage of an act levying customs there for the use of the King, of which customs, by special contract dated April, 1644, Cecilius, Lord Baltimore, was made collector.[5]

In the late autumn[6] of 1644 Claiborne, who was then a member of the Virginia Council, sailed up the Chesapeake in his own vessel, bringing with him another boat called *Thompson's Cock.* The party numbered ten or eleven persons, and, joining with seven or eight others newly arrived from Chicacoan, they stirred up the inhabitants of Kent Island to rise in arms against the settled government and, by force of arms, to take the house of Captain Brent, who then lived on the island. They met at Cummins' house and marched about three miles toward Brent's and as far as John Abbott's house. Then the men, before they would march further, demanded that Claiborne show the authority under which he acted. He thereupon showed them a piece of parchment and a letter, which he said were a commission and a letter from the King. Most of the men doubted the validity of his authority, gave over the design and left him, whereupon he betook himself to his vessels and departed.[7]

Claiborne had come again into Provincial history. On June 3 Brent had ordered[8] the seizure of any of his property, as he had been "convicted of open hostility done" in Maryland against the Proprietary, and Simon Richardson, sheriff, of Kent, seized twenty-seven neat cattle of Clai-

[4] 3 Md. Arch., Coun., 164.
[5] Streeter, Maryland, Two Hundred Years Ago, p. 33; Neill, Va. Carolorum, 175.
[6] 4 Md. Arch., Prov. Ct., 458.
[7] J. H. Latané, Early Relations between Maryland and Virginia. 13 J. H. U. Studies. For a sketch of Claiborne's Life, see 27 N. E. H. G. Reg., 125, written by S. F. Streeter and edited by S. M. Allen.
[8] 4 Md. Arch., Prov. Ct., 281 and 390.

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borne's. The loyalty of Kent was doubtful, and on November 22 Calvert, who had heard of Claiborne's voyage, directed eight men to proceed in a shallop to that island.[9] They should go secretly and observe whether there were a vessel riding against the southern end of the island, and should go ashore at one of the weaker plantations further north than Kent Point to learn the state of Kent Island, especially inquiring as to Claiborne and delivering a letter to Brent. Claiborne had been appointed by the King treasurer of Virginia for life in 1642, but had now ranged himself with the Parliamentarians.[10]

On January 1, 1644–5, Brainthwait was appointed commander of Kent, his stronger hand being substituted for Wyatt's, though the latter was retained as a commissioner, serving with Vaughan, Abbott, and Cox.[11] About the same time proclamation was issued forbidding any vessel to trade at Kent until it had been at St. Mary's, declaring Claiborne and one Richard Thomson, a planter, enemies of the Province, and forbidding any intelligence or correspondence with them. During these exciting times[12] the court records went on as usual; an ear-mark for cattle was entered,[13] and debts of guns, corn and cows, and suits for failure to perform service and to pay for physic occupied the court's time.[14] Calvert and Cornwallis's attorney, Fenwick, contended over the protested bills. A more serious thing was that Brent and Calvert fell out. The Governor sued Brent for thirty thousand pounds of tobacco and cash for trespass.[15] On January 25 Calvert ordered Brent's arrest for crimes,[16] yet Brent sat in court and filed a suit[17] on February 4. Mean-

[9] 3 Md. Arch., Coun., 161.
[10] 2 Bozman, 289.
[11] 3 Md. Arch., Coun., 161. 4 Md. Arch., Prov. Ct., 290. Geo. Tailor was commissioned to bring the bark *Virginia* into the port of St. George's River.
[12] 4 Md. Arch., Prov. Ct., 288.
[13] 4 Md. Arch., Prov. Ct., 300, 305.
[14] 4 Md. Arch., Prov. Ct., 288, 290, 294, 302, 303.
[15] 4 Md. Arch., Prov. Ct., 293 (Brent sat then as judge, 294), 304.
[16] 4 Md. Arch., Prov. Ct., 301.
[17] 4 Md. Arch., Prov. Ct., 302, 358.

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while, Brent petitioned that the Council intercede for him with Calvert, and that Calvert be given security to indemnify him if William Claiborne wrest Kent Fort Manor from him.[18] On the same day Brent and his wife Mary also asked the Council to intercede so that Calvert should give them some cattle he owed them, or pay damages. The Council, by Lewger, on January 9, asked Calvert to do justice in these matters.

The Assembly of 1644–45.

After Calvert's return to Maryland from Virginia he summoned,[1] on November 16, 1644, "all freemen" to appear personally or by proxy at St. Mary's on December 3; but he further authorized Lewger to prorogue the session and to act himself as commander of St. Mary's County should Calvert not be present on the day appointed for opening the session. On November 11 Calvert had prohibited, by proclamation, any traffic with the Indians for arms or ammunition, and any receiving of Indians, unlicensed by the Governor, into planters' houses. Any one finding an Indian in possession of gun and ammunition without license was authorized to seize them and bring them to the Governor.[2] The General Assembly was not held in December, but on February 11, 1644–5, it met at St. Mary's under Calvert's presidency.[3] The proceedings are lost and but one act is known, which provided that, for the defense of the Province, Calvert might pay for the late expedition to Kent, for this Assembly, and for a garrison which he was authorized to establish at Piscataway, by assessing these charges "on every head able to bear arms," provided the assessment did not exceed fifty pounds of tobacco or a barrel of corn. He might also press men for the garrison at a yearly salary of twenty-three barrels of corn, or one thousand pounds of tobacco and three barrels of corn, and might appoint the payment of such soldiers in such hundred as he saw fittest.

[18] 3 Md. Arch., Coun., 162.
[1] 1 Md. Arch., Ass., 202.
[2] 3 Md. Arch., Coun., 160.
[3] 1 Md. Arch., Ass., 205.

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THE PLUNDERING TIME.—ANARCHY AND INGLE.

On February 11, the day the Assembly adjourned, the court sat and heard a number of cases, among them one against Dandy for service.[1] One Genalles alleged that he had agreed to find Dandy coals, beat his bread from time to time, and gather up his tobaccos, but Dandy replied that, after he had employed Genalles for three weeks, he refused to work on Saturday afternoons and so was discharged. On the next day the court sat again and held that a suit arising from a contract made in Virginia by inhabitants of that Province touching payment to be made therein ought to be tried in Virginia, as the Maryland court had no jurisdiction.[2]

On August 26, 1644, the House of Commons granted to eight vessels the right to carry victuals, clothes, arms, ammunition, etc., "for the supply and defence and relief of the planters of Virginia." One of these vessels was the *Reformation,* of which Ingle was still master. He was in London receiving cargo in October and was entrusted by Cornwallis with goods valued at £200 sterling. In a petition which he prepared in February, 1646, on his return to England, he said that on his arrival in Maryland he found that Calvert had a commission from the King in Oxford "to seize all ships belonging to London and to execute a tyrannical power against the Protestants and such as adhered to the Parliament, and to press wicked oaths upon them and to endeavor their extirpation." He then conceived himself bound to come to their help and "did venture his life and fortune, in landing his men and assisting the said well affected Protestants, against the said tyrannical government and the Papists and malignants. It pleased God to enable him to take divers places from them and make him a support to the said well affected." The smug hypocrisy of these sentences is revolting, and their falseness throws a most unfavorable light on Ingle's character.

[1] 4 Md. Arch., Prov. Ct., 306.
[2] 4 Md. Arch., Prov. Ct., 307.

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In 1645 Ingle was thirty-six years old,[8] and in February of that year he arrived in Virginia again in the *Reformation,* bearing letters of marque from the Lord High Admiral, under authority of Parliament, which gave him power to seize ships bound to or from any place in hostility against the Parliament or trading with the inhabitants of such places. In Virginia Ingle heard of the King's commission to Leonard Calvert and was given a copy of it by Claiborne. Ingle then proposed to his company that they change their trading voyage to a "man of war cruize" to Maryland, which was in "opposition and hostility" against Parliament. He falsely asserted also that the Marylanders used all "means to suppress such of London as came thither," and offered his crew one sixth of whatever might be captured, which offer seems to have been accepted by all. They promptly sailed northward and arrived in St. George's River on February 24. At the mouth of St. Ignatius Creek the Dutch ship *Speagle* was found. She had been chartered by her owners, citizens of Rotterdam, to English merchants resident there, for a trading voyage to Virginia and back to Holland, and carried a cargo of sugar, strong waters, lemons, hats, shirts, stockings, frying pans, etc., valued at 2338 guilders. The expectation was to trade these supplies for tobacco, beaver skins, and other commodities, which would be worth in Holland six times that amount. Arriving in Maryland three days after Christmas, the ship had been trafficking in the Province for two months when Ingle found her at anchor, flying the colors of the Prince of Orange at her topmast and the English flag at her stern. Ingle was flying a white flag, and when he ordered the master of the *Speagle* to come on board, in the name of King and Parliament, the latter went, accompanied by three Englishmen who were among his crew. When the master of the *Speagle* (or *Looking Glass,* as her name is translated in

[8] Ingle's Ingle, 19 ff. Journal of House of Commons, 1642–1644, p. 607. 6th Rept. Hist. Com., 101. 1 Scharf, History of Md., 149. Extremely important new light is thrown upon Ingle's career by Mr. H. F. Thompson's article in 1 Md. Hist. Mag., 125.

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some of the records) had completed his account of the voyage, Ingle "detained" him and his men as prisoners and fired four guns at the *Speagle.* He next set off with some of his men to board her as soon as possible, to "prevent the effusion of blood" as he said, but he did not explain how this would prevent it, nor why he expected it. He afterwards stated that the guns on the *Speagle* were loaded and she was ready for a fight, probably intending to attack the *Reformation* and only prevented from doing so by his promptness. The Dutch captain well replied to this, that if he had intended to attack Ingle there was no reason why he should not have done so and not have come on board the *Reformation* when Ingle summoned him, but that his ship was always kept in readiness for fighting, to ward off any possible Indian attack. Ingle met with no resistance on the *Speagle* and found no one to oppose him, but discovered the cabin doors fastened against him. Procuring axes and other implements, he hewed at the doors a while, until those within opened the doors and "yielded themselves." In the cabin Ingle and his party found one of the charterers of the vessel, who had come to Maryland in her, and between decks Giles Brent was discovered and made prisoner.

Ingle next ordered the master of another vessel, lying about four leagues away, to come on board the *Reformation.* He did so, said he was bound for London with his cargo, and was then permitted to return to his ship. Ingle expected to see him on the next day; but during the night he got under way and escaped. John Durford, mate of the *Reformation,* was put in command of the *Speagle,* and Ingle then had two ships, one mounting twelve and one eleven guns, so that the Province was at his mercy. He afterwards alleged, as an excuse for his various exploits in Maryland, that most of the people there were "Papists," that nearly all of them assisted Leonard Calvert in putting his commission in force, that they had suffered none but those of the "Romish religion" to hold office, that it was generally believed in Maryland that, if Ingle had not

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come, the Papists would have disarmed all the Protestants, and that all the property taken or destroyed by him, or his men, belonged to Papists. Some of these statements are false and others were obviously made solely to stir up religious prejudices. Men were now sent ashore to seize the tobacco and other goods which were there waiting to be shipped on board the *Speagle,* and they took one hundred hogsheads of tobacco belonging to the merchants who chartered the vessel, to its captain and other officers, and to Leonard Calvert. They also took guns and many chattels from the people, burned some of their houses, and terrified them so that they fled to the woods for safety. A party was sent in pursuit of Governor Calvert, but Fenwick, Lewger, Buicks (?), Copley, Causin and another man met them and turned them back, so that Calvert escaped to Virginia.[4] Ingle's party took St. Thomas's Fort, however, and made the garrison prisoners.

Ingle was near Heron Island with his vessel in February, and Anthony Rawlins and Thomas Gerard were on board also. Ingle showed Rawlins[5] an account against him for a thousand pounds of tobacco owed to Fenwick and, seizing upon the tobacco, said, "If the tobacco belonged to the Governor, Mr. Copley, Captain Cornwallis, or Mr. Fenwick, it belongs to me." A little later some of Ingle's men came to William Lewis's house, to take away his corn, but Gerard and four of his men prevented them, alleging that the corn belonged to Gerard and carrying it off.[6] This time was known in future days as "the plundering year,"[7] or as "the Rebellion."[8] We catch fleeting glimpses from the court proceedings of events which occurred after the restoration of Proprietary government. Richard Banks had

[4] On Apr. 5, 1648, Robt. Sharpe sued Mrs. Brent for the value of a musket which Calvert "detained from him at his going out of the Province." 4 Md. Arch., Prov. Ct., 379, 381.

[5] 4 Md. Arch., Prov. Ct., 349, 360. The jury exonerated Rawlins from further payment, when Fenwick sued him in 1647–8.

[6] 4 Md. Arch., Prov. Ct., 357 (cf. 353, 359), 363.

[7] 4 Md. Arch., Prov. Ct., 362.

[8] 4 Md. Arch., Prov. Ct., 383. "Ingle his raising of the rebellion;" op. cit., 421, 422.

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paid Fenwick, as Cornwallis's agent, two hogsheads of tobacco, which were forcibly taken away from Banks's house by Ingle's command and carried on board his ship.[9] Banks asked of the men who took the tobacco their authority, and they replied, "We will show no authority, who will, or who durst say anything against?" Cornwallis seems to have been the especial object of Ingle's hatred. Ingle's follower, Ralph Beane, came to Francis Pope[10] and demanded five hogsheads of tobacco which Pope held for Cornwallis, and said, "Capt. Ingle has sent for it to be carried into his ship." Pope replied, "I shall deliver none of it, except to Mr. Fenwick himself." Whereupon Ingle commanded that all the tobacco be carried on board his ship, which was done. From Walter Beane,[11] Ingle took tobacco due Cornwallis and gave him an acquittance. Ingle sent two men to Beane's house for it. Beane refused to deliver the goods, whereupon Ingle sent him word that, unless he would suffer the men to take the tobacco, they should take away the tobacco which was in cask and burn the tobacco house. Beane was not able to withstand them, and they carried away all the tobacco which was in cask. Cornwallis had left his manor,[12] the Cross, in Fenwick's hands. Fenwick was bound to Accomac and had a pinnace in the river, in which were his clothes, bedding, and other goods. To bring the pinnace nearer the house, Fenwick sent three servants, but they refused to obey, and waiting until Ingle came into the creek, allowed him to take and plunder the pinnace.

Captain Cook, of the *Speagle,* said, in later admiralty proceedings brought by Ingle to have the vessel condemned as a prize, that he had been at Captain Cornwallis's house six or seven times, and that it was very well furnished with

[9] 4 Md. Arch., Prov. Ct., 370. Another hogshead belonging to Cornwallis was taken from Walter Waterlin's house. All Fenwick's papers were "plundered from him;" op. cit., 416.

[10] 4 Md. Arch., Prov. Ct., 372. Pope's and St. Thomas's forts are spoken of; op. cit., 381.

[11] 4 Md. Arch., Prov. Ct., 375. The same Walter Beane, on Oct. 5, 1648, sued Gov. Greene for a debt which the latter had promised to see satisfied out of Baltimore's customs; op. cit., 419.

[12] Ingle's Ingle, p. 27. Neill, Va. Carolorum, p. 177.

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carpets, tapestry hangings, silver, etc. From the house Ingle and his men took all these things, together with linen, bedding, brass, pewter, tobacco, etc., and Captain Cook found nothing left, when he returned after they had gone, except the bed on which Cornwallis's wife and children lay. The house itself was spared, but the storehouses were burned, while the pinnace, which was not over a year old, well fitted and provided with a shallop and small boat, so that in all it was worth £500, was carried off, as were four negroes and twelve other men- and maid-servants. Edward Matthews and others of the servants were held captive on the *Reformation.* Thomas Harrison, a servant, who had been bought from Ingle by Cornwallis, joined his former master, and then fled to Accomac.[13] To protest against Ingle's acts, Fenwick went on board the *Reformation* and, on his return to the shore, was seized by a party of men under John Sterman and carried back to the vessel as a prisoner. While Fenwick was on the *Reformation*[14] Thomas and John Sterman and William Hardwick led a party to sack Cornwallis's dwelling. They carried away the contents, "plate, linen hangings, bedding, brass, pewter," etc., which the owner estimated to be worth £1000, "pulled down and burnt the pales about it, killed and destroyed all the swine and goats and killed or mismarked almost all the cattle, swine, goats, sheep, and horses. They took or dispersed all the servants, about twenty in number, carried away a great quantity of sawn boards from the pits and ripped up some floors of the house." The Stermans then possessed themselves of the house, dwelt in it a while, and, "at their departing, took the locks from the doors and the glass from the windows."

In another pinnace, assisted by one Andrew Moore, Ingle plundered Copley's two houses and burned one of them at Port Tobacco, and made him prisoner. They dispersed his sixty head of cattle and disposed of his twenty servants. In all Copley claimed that he suffered a loss amounting to £2000. Copley was a temporal coadjutor of the Jesuits, and

[13] Vide 10 Md. Arch., Prov. Ct., 362, 371.
[14] 10 Md. Arch., Prov. Ct., 253.

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though he claimed to be "a sober, honest, and peaceable man, not given to contention or sedition, nor anyway opposing, or in hostility to the King and Parliament," he could not expect consideration for himself, nor for those he represented, from one whose pose was to show himself an ardent Protestant. John Lewger was also seized and held prisoner. Dr. Thomas Gerard's house was burned. Nicholas Green, boatswain of the *Reformation,* headed a party which took from the house of Nicholas Causin, a Roman Catholic, two beds, a rug, a small trunk and a musket, which they carried to the fort for the use of the soldiers. Against Giles Brent and his sister Margaret, Ingle's conduct was flagrantly bad. He seized their pinnace, the *Phoenix,* worth £50, and took out of her bedding and other commodities worth £10. Out of another boat Ingle took property of the Brents' consisting of linen, shoes, stockings, sugar, etc., valued at £40, and a little cabinet containing jewels worth £20. From still another pinnace, the *Shotlocker,* Ingle took a "chest with clothes in it, 2 guns, linen and other commodities to the value of £14 and divers writings, books of accounts and specialties to the value of £200 sterling, all which articles did belong to Giles Brent." Account books Ingle invariably destroyed. The inventory filed by the Brents and Copley in the admiralty suit they brought against the *Reformation* shows how wealthy they were and how great was their loss. They enumerate among the articles seized at St. Mary's and Kent one hundred head of neat cattle, twenty sheep, about one hundred hogs, much wheat, barley, pease and tobacco, eight apprentice servants carried off and twenty-one more made unuseful, five great bowls double gilt, each one of which was worth £6,14s., silver spoons, two small silver salts, two silver cruets, a small silver basin, two silver dram cups, a great diamond worth £200, two small chains of gold each worth £30, two jewels containing in each eight diamonds and worth £32, one other jewel with a "fair diamond and ruby" worth £20, two bracelets of gold, "engraven agates," four or five diamond

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rings worth in all £10, a ring with a great sapphire, a silver chain and several enamelled chains, clothing, "arras hanging," eight feather and two flock beds, "household stuff sufficient to furnish plentifully two large houses," "one fair library of books" worth £150, and thirty-six guns. One can imagine what Mistress Margaret Brent said when her jewelry was taken from her. Brent, Copley, and Lewger were carried prisoners to London in the *Speagle*. When the vessels, which seem to have left Maryland in the summer of 1645, were near Plymouth, England, Ingle summoned Durford and Beane to come on board the *Reformation* and, when they had done so, told them "he would have Brent and Copley thrown overboard." The prisoners would have suffered this fate but that one of Ingle's "mates would not agree to it." When London was reached the prisoners were set free; they brought an admiralty suit against the *Reformation* and a personal one in chancery against Ingle and Durford for damage to their persons and property, but no record of any decision in these cases has been found. Ingle, on his part, brought an admiralty suit to have the *Speagle* condemned as his prize, and, when the decision of the court went against him, he appealed, but the fate of this appeal is unknown. His career in Maryland was a true "plundering time," and Thompson well ends his account of it by saying, "It is not to be wondered at that, since that voyage, his name should be coupled with reproach and infamy and his memory associated with deeds of violence and outrage."

Fathers White and Fisher were carried off to England as prisoners,[15] possibly by Ingle when he returned in 1645. Father White was confined in Newgate Prison from 1646 to 1648, and was then dismissed on January 7 by the House of Commons, on condition that he leave England within fifteen days. That the Roman Catholics in Maryland were not entirely deprived of rights we learn from an occurrence in

[15] 4 Md. Arch., Prov. Ct., 418. Ingle's Ingle, 24. Neill's Founders, 103. Neill, Ld. Baltimore and Maryland Toleration, 28 Contemp. Rev., 616.

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the summer[16] of 1645. On the night of July 31 the Roman Catholics had the habit of honoring St. Ignatius,[17] whose feast was that day, by firing a salute of cannon. The salute was fired about five miles from a fort which the invaders held, and, "aroused by the nocturnal report of the cannon," they came to St. Inigoes on the next day, broke open the houses of the Roman Catholics and took away whatever arms or ammunition they could find.

During these troublous times we are told[18] that Lieutenant Nicholas Stillwell and others of the colony of Virginia secretly conveyed themselves to Maryland and others were likely to follow, so that the Assembly of the former Province instructed Captain Thomas Willoughby and Captain Edward Hill to go to "Maryland or Kent" and demand the return of persons lately departed from Virginia.

In the summer of 1645[19] Leonard Calvert appealed to the Virginia authorities for help. They informed him on August 9 that "in respect of their daily opposition by the Indians they could send him no help," and that they recommended that the differences between Claiborne and Baltimore be submitted to arbitration. They also expressed the

[16] Shea, Church in the Colonies, 37 ff, states that Thomas Copley and Father Philip Fisher are the same, and suggests that Copley may have paid the expenses of the Jesuits who came to the Province. Copley came to Md. in 1637 and died in 1652 or 1653 (p. 47). Shea (p. 55) says that Father Brock's real name was Ferdinand Poulton and that he was accidentally shot crossing St. Mary's River, and that Bernard Hartwell (p. 65), who was sent out as Superior of the Mission in 1645, died the year after, leaving no priest in the Province. Fathers Rigbie and John Cooper, who reached Maryland in 1644, escaped to Virginia, where they both died in 1646. The service of the Maryland mission had been so desired that twenty-three young Jesuits in July and August, 1640, begged the Provincial that they might be sent thither. Shea claims that, in the early days, there was a school maintained in Maryland by the Jesuits and kept by Ralph Crouch.

[17] 7 Md. Hist. Soc., Fund Pubs., 95. The miraculous death of a scoffer at St. Ignatius is recounted at length.

[18] Neill, Terra Mariae, 110; Va. Carolorum, 188. 1 Hening, 321.

[19] Streeter, Md., Two Hundred Years Ago, 34. Plantagenet's New Albion said: "I went to Chicacoen, avoiding Maryland, for it was then in war with both the Susquehannocks and all the Eastern Bay Indians, and a civil war between some revolters, Protestants, assisted by fifty plundered Virginians, by whom Mr. Leonard Calvert was taken prisoner and expelled." Vide also p. 35.

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opinion that Claiborne should "for the present surcease to intermeddle with the government of the Isle of Kent," to which advice he paid little heed.

Echoes of Ingle's Acts in England.

After Ingle's return to England,[1] Cornwallis brought suit against him there for damages he had suffered in the destruction of his property to the alleged amount of £3000. He stated that in February, 1644–5, Ingle had incited his servants to rebellion and that, under the leadership of John Sterman, Thomas Sterman his son, and William Hardwick, they took possession of his mansion, carried off his cattle, wrenched off the locks of his doors, and damaged his estate.

In England, Baltimore's legal title to his Province was attacked, as his possession of it had been in America. On November 28, 1645, a petition[2] of divers of the inhabitants of Maryland, probably brought over by Ingle, was read at the Committee of Lords and Commons for Foreign Plantations, setting forth "the tyrannical government of that Province, ever since its first settling by recusants," and asking that Parliament appoint a government. Brent's seizure of Ingle's ship and Calvert's commission to seize Parliamentary vessels were proofs that neither Brent nor Calvert was fit to hold office, and that Baltimore had broken the trust reposed in him by the charter. It would be good service to place Maryland in Protestant hands. It was ordered by the House of Lords on December 25, as a result of this petition, that an ordinance be drawn up for settling the government in Protestant hands[3] and for the indemnity of Ingle

[1] 1 Scharf, 149. Cornwallis represents himself as possessing "a comfortable dwelling house furnished with plate, linen, hangings, bedding, brass, pewter, and all manner of household stuff, worth at least £1000, about 20 servants, at least 100 breed cattle, a great stock of swine and goats, some sheep and horses, a new pinnace about 20 tons, well rigged and fitted, besides a new shallop and other small boats."

[2] 3 Md. Arch., Coun., 164. The only proof given was that the Jesuits had made converts. Ingle evidently inspired the petition.

[3] The text of this ordinance may be found in 3 Md. Arch., Coun., 173.

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from suits "for matters done in Maryland for the Parliamentary service." On February 24, 1645–6, Ingle filed a petition, stating that he had come to the assistance of the Protestants and such as adhered to the Parliament in Maryland, and had ventured his life and fortunes in assisting them. In this he had "several bickerings" with the "tyrannical governor and the papists and malignants his adherents" and took divers places from them. Since his return fictitious suits had been brought against him at common law in the name of Cornwallis and others for taking the goods he seized from "these wicked papists and malignants," with which goods he "relieved the poor distressed Protestants there, who otherwise must have been starved and rooted out." These actions in any case, "for matters of war acted in foreign parts," could be heard only by the constable and marshal, and it would be dangerous to permit malignants to "sue the well affected for fighting and standing for the Parliament." Therefore, Ingle asked that the case between him and Cornwallis be heard at the bar of the House of Lords. This was ordered to be done on March 3. Cornwallis filed his papers[4] on March 2, alleging that Ingle was not satisfied with converting to his own use commodities to the value of £200 with which Cornwallis had intrusted him to trade, but had rifled his house in Maryland to the value of £2500 and, returning to England, had complained to the Committee of Examinations against Cornwallis as an enemy to the State, hoping to shelter himself. The Committee did not agree with Ingle in this charge, so Cornwallis sued Ingle at law for the commodities given him with which to trade, and procured a commission from chancery to examine witnesses concerning the value of the goods taken in Maryland. To stay these proceedings, Ingle sued Cornwallis for £5000, induced Cloberry, Claiborne's former partner, to sue him for £10,000, and had him put in prison, whence Cornwallis got out with the help of friends. After attending the Lords several days and finding Ingle absenting

[4] 3 Md. Arch., Coun., 166.

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himself, Cornwallis, to avoid expense, asked that the matter be heard shortly,[5] but it dragged on.

Meantime was filed a foolish, trumped-up petition of Mary Ford,[6] a widow, "in behalf of the Protestant inhabitants in Virginia and Maryland." She accused Cornwallis of kidnapping two of her children to plant Maryland and make it more fruitful, of causing Ratcliffe Warren's death, of being "a great agent and factor for the settling a Popish faction in Maryland," and of joining Baltimore's "poisoned purposes" to "rob, murder, and destroy." On April 25 she petitioned again, saying that she could not find Cornwallis, but understood that the differences between him and Ingle were to be heard in three days, and asking that her petition might be heard first.

On February 8, 1646–7, Cloberry and seventeen other London merchants trading to Virginia petitioned the Lords to pass the ordinance for taking Maryland from Baltimore at once, and to send it down to the Commons, as he and his agents "have acted horrid things in that Province as Papists and Rebels."[7]

On March 4, 1646–7, Baltimore filed a petition with the Lords, stating that he "hath engaged the greatest part of his fortune" upon Maryland, and asking for a bill of particulars "wherefore it is proposed to repeal his charter," and that he may have reasonable time for defense and for bringing witnesses from Maryland.[8]

On September 8, 1647, Ingle transferred to Cornwallis certain bills and made him his attorney to collect them. Among them were two of John Sterman for powder and tobacco given in April, 1645. This seems to show that Ingle and Cornwallis had compromised their difficulties. No further steps seem to have been taken for two years,[9]

[5] 3 Md. Arch., Coun., 170. Ingle went to sea; vide 179.
[6] 3 Md. Arch., Coun., 169.
[7] 3 Md. Arch., Coun., 181. They say there have been several days appointed for a hearing.
[8] 3 Md. Arch., Coun., 180. On January 23, 1646–1647, Baltimore asked the House of Lords that depositions of witnesses made in the Admiralty Court concerning Maryland might be read. Vide Ingle's Ingle.
[9] Foundations of Md. 18 Md. Hist. Soc., Fund Pubs., 101 ff.

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and Johnson points out that in 1647 Cromwell and the New Model Army had gained the control and that their influence was for toleration, while many Papists, among whom may have been Baltimore, showed sympathy with the Parliamentary party, in the hope of getting religious toleration. Chalmers thus sums up Baltimore's policy: "Possessing great prudence, as well as great reach of thought, the first proprietary joined the prevailing party with the usual policy of the world. Nothing was required by his charter but a general allegiance and he seems to have been willing to yield general subjection to any sovereign who might gain possession of England."[10]

In December, 1649, Ingle sent to the Council of State a petition against the government of Maryland. The hearing was referred to the Committee of the Admiralty, and postponed to January 10, 1650. Baltimore then asked that it be deferred until the sixteenth, when he appeared and was ordered to make answer on January 30. On the twenty-ninth the hearing was postponed to February 6. It was again delayed until March 1, when Ingle was "unprovided to prove his charges." On March 15, after several debates concerning Leonard Calvert's commission of 1643 from the King, the Attorney General was directed to examine the validity of the Maryland charter. On December 23, 1651, the Council of State left Baltimore to "pursue his cause according to law."

Kent Island During the Rebellion.

Mrs. Brent, in 1648, sued Edward Cummins,[1] of Kent Island, for entering with other islanders into her house on the island and dispersing all her goods, so that her servants left it for want of provisions and other necessaries, whereby Claiborne came to the island. It was alleged[2] also that Edward Cummins went up into the loft of Captain Brent's

[10] 1 Introduc. to the Hist. of the Revolt of the Am. Cols., 79. 7th Rept. Hist. Com., 54, 162. Calendar Col. Papers, 1574–1660, pp. 331–337, 368.

[1] 4 Md. Arch., Prov. Ct., 435, 449, 473, 481, 489.

[2] 4 Md. Arch., Prov. Ct., 441.

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house and threw down his books to be burned, saying, "Burn them Papist Divells." The matter dragged on for over a year; Cummins alleged that he had already paid Giles Brent for the damages, and the case was finally dismissed by agreement of the parties. On Kent Island, Cox took back the cattle Brent had taken from him,[3] and courts were held by the rebels. Brent had transferred Kent Mill and Kent Fort, with all the land, housing and appurtenances to his sister. Peter Knight, "bearing himself as the captain of a rebellious crew,"[4] took the mill, in July or August, 1646, converted to his use the profits, and made a garrison of Kent Fort House "to defend the said Isle against the Governor." He converted the profits of the land to his own use, killed some of the cattle and made the rest wild, fired various houses,[5] used up Mrs. Brent's "wain and wheels," and dispersed her plow-gear. When he was forced to fly by the Governor, he took away all the iron work of the mill and the hinges, locks, and doors of Kent Fort House.

Robert Percy was a prisoner at Pope's Fort,[6] and it was rumored that he had hidden the priest's plate. John Hilliard said he would forgive him a debt, hoping that Percy, who was about to leave the country, would tell him where it was hidden. But Percy did not tell him and so Hilliard sued in vain for the debt in Greene's administration.

About Christmas time[7] in 1646 Claiborne, who with his

[3] 4 Md. Arch., Prov. Ct., 394, 395.

[4] 4 Md. Arch., Prov. Ct., 399, 417, 419, 434, 454.

[5] A tobacco house and a hogsty, and at least two oxen and a calf; 4 Md. Arch., Prov. Ct., 454.

[6] 4 Md. Arch., Prov. Ct., 415, 418, 419. Brent was carried as a prisoner to England.

[7] The author of Plantagenet's New Albion visited Kent Island about this time (p. 16), and found it "too wet and plashy, having bad weather." He claimed the benefit of the *hactenus inculta* clause for Kent Island, and said that the Delaware Bay does not lie in 40° north latitude, but ends at 38° 50′ (p. 29). He also visited Palmer's Isle in the mouth of the Susquehanna (named for Edward Palmer of Leamington; 28 Contemp. Rev., 616), and found it to contain 300 acres, half mead, half wood. In it is a rock forty feet high like a tower, fit to be built on for a trading house for all the Indians of the Chesapeake Gulf. The island lies, he claims, in 40° 12′ north latitude. Five miles away is Mount Royal (the Port Deposit hills), whence you may see, one hundred miles off, high hills like sugar-loaves.

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cousin Thompson had possessed himself of Brent's house on the Isle of Kent, suddenly drew into arms the inhabitants of the island, together with about twenty men whom he had brought with him from Virginia. His men had spread stories that Claiborne had a commission from Sir William Berkeley to take the Isle of Kent and such estate as had formerly belonged to Captain Claiborne therein, and that Claiborne would have been commissioned Governor of Virginia in that year if he would have accepted it. Having mustered the men under Lieutenant South and Peter Knight, in Kent Field, he proposed to them to go down with him in warlike manner to assault and take the Governor of Maryland and the fort at St. Mary's. They believed he had lawful authority and assented to go, but, after the embarkment of some of the provisions for the voyage, some desired to be acquainted with his authority before they would embark themselves. He refused to show this, so they "drew off from the design." Claiborne again urged them, saying that he would carry them down in his eight pinnaces and land them at Point Lookout and then go over to Chicacoan and send or fetch more help. The inhabitants refused to go and, after a day, Claiborne left the island for Virginia.

Thomas Bradnox[8] was also accused by Mrs. Brent of having, as captain of a certain crew of rebels, made her house his garrison for some time, burned down a house of hers, killed some cattle and consumed corn and other of her provisions. After the reducing of the island to its obedience to Baltimore, he held intelligence with the rebels, whereby Kent Mill was fired and certain cattle killed by the rebels.[9]

Captain Robert Vaughan stated that in April, 1647, Thomas Bradnox, in company with the rebels of Kent, came twice in arms and assaulted the house where Vaughan lived. In the assault Vaughan lost two servants and was taken prisoner, being detained at Bradnox's house for three weeks. During this time the rebels burnt four hogsheads of his tobacco.

[8] 4 Md. Arch., Prov. Ct., 436, 444.
[9] 4 Md. Arch., Prov. Ct., 460.

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Calvert's Restoration.

On July 30, 1646, in Leonard Calvert's name, there was issued[1] to Captain Edward Hill, whom the Council had made Governor, a commission appointing him to that office with the same authority as Calvert himself, and authorizing him to take as a reward for his service one half of all rents, profits and customs, etc., accruing to Baltimore during the time of his government. Hill was to preserve the stocks of cattle belonging to the Proprietary, to be turned over on demand.

Hill came to Maryland before the arrival of this commission, which may not have been issued with Calvert's knowledge,[2] and he seems to have reduced the Province to some order. He summoned an Assembly, which passed certain laws, but, as all of its proceedings are lost, we have but vague idea of them. Baltimore disassented to them all,[3] on August 12, 1648, being informed that some of them "are very prejudicial to our rights and royal jurisdictions" in Maryland, and others are "inconvenient for our people there." Calvert confirmed[4] the summons of Hill's Assembly by reconvening it instead of summoning a new one, in December, 1646, after he had returned from Virginia. The Assembly of 1649 spoke of this Assembly as consisting, with only two or three exceptions, of that "rebelled party" and Calvert's "professed enemies," whom he had just surprised and cast into prison.[5]

In 1649 Baltimore granted James Lindsey and Richard

[1] 3 Md. Arch., Coun., 171. Under his own commission (op. cit., 157), Calvert's authority to do this seems clear, but Baltimore on August 12, 1648, disavowed the act, on the ground that Hill was not of the Council and only such should be named; op. cit., 220.

[2] 2 Bozman, 293.

[3] 3 Md. Arch., Coun., 220.

[4] 3 Md. Arch., Coun., 188.

[5] 1 Md. Arch., Ass., 239. They instance as proof thereof that he freed them during this Assembly (12 W. & M. Coll. Q., 267). Some of the opponents of the Proprietary removed to Virginia, for example, Francis Gray, of St. George's hundred, carpenter, who was in Maryland in 1637, and married Alice Moorman, a servant of Cornwallis brought into the Province in 1637. He settled in Machodoc, Westmoreland Co., Va., after Leonard Calvert's return.

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Willan lands[6] "for their singular and approved worth, courage, and ability, to the end a memory of their merit and of his sense thereof may remain on record to the honor of them and of their posterity forever." To these tried servants of the Proprietary we may add John Jarboe and William Evans,[7] who received a grant of a Kentish plantation which had been forfeited for rebellion.

In April, 1649, the Assembly[8] spoke of the "heinous rebellion" begun by that "Pirate Ingle and afterwards almost for two years continued by his complices," in which time Baltimore's "loyal friends" were despoiled of their estates and banished from the Province or plundered. These enemies strove by oaths and other inventions to withdraw the people from their obedience to the Proprietary and to assure themselves of the Province so wrongfully taken. In spite of these efforts, the Proprietary's friends underwent pains and travail in aiding Calvert to subdue the rebels and conserve the Province for Baltimore. Calvert[9] brought soldiers with him from Virginia in 1646 and gave them sack[10] at the fort at St. Inigoes, whither he directed that all who had been in rebellion should be brought.

The frequent changes of government in Maryland's early history remind us of Hammond's words, when he was trying to induce Englishmen to settle in the Province: "Maryland is (not an Island as is reported, but) part of that main adjoining to Virginia, only separated or parted from Virginia by a river of ten miles broad, called Potomack river,—the commodities and manner of living as in Virginia, the soil somewhat more temperate (as being more northerly) many stately and navigable rivers are contained in it, plentifully stored with wholesome springs, a rich and pleasant

[6] Kilty, Landholder's Assistant, 79. The Manor of Snow Hill, which was escheat.

[7] Kilty, Landholder's Assistant, 74, 85.

[8] 1 Md. Arch., Ass., 238.

[9] 4 Md. Arch., Prov. Ct., 344, 382, 432. Richard Bennett furnished corn, some shot, a yearling and poultry for Gov. Calvert and his company.

[10] Receipt for sack given soldiers, 4 Md. Arch., Prov. Ct., 402, 410, 414, 416, 417, 420.

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soil, and so that its extraordinary goodness hath made it rather desired than envied, which hath been fatal to her as beauty is often times to those that are endued with it."[11]

Leonard Calvert's Last Assembly.

At St. Inigoes Fort on December 29, 1646, came together an Assembly of whose proceedings we have but fragmentary record.[1] From this record it appears that this Assembly sat in two houses, Calvert, with Lewger and Greene, constituting the Council or Upper House. After the Upper House was called together, the burgesses were sent for, and Calvert made them the first Governor's speech we have preserved,[2] saying: "You were called hither as freemen to treat and advise in assembly, touching all matters, as freely and boldly, without any awe or fear and with the same liberty, as at any Assembly you might have done heretofore, and you are now free from all restraint of your persons and shall be free during the Assembly. After the Assembly, I save to myself, such charge as I may have against any for any crime committed since the last general pardon."

Six men were then sworn who testified that Calvert, before returning from Virginia, told publicly his little army, of which they were members, that, "You are to attend me on these terms, viz: If I find the inhabitants of St. Mary's have accepted my pardon for their former rebellion and are in obedience to his Lordship, you are to expect no pillage there, but I will receive the inhabitants in peace and only take aid from them to the reducing of Kent."

The session continued until January 2,[3] when the Assembly adjourned until March 1, though it did not meet then, nor

[11] Hammond's Leah and Rachel, 1656.

[1] 1 Md. Arch., Ass., 209. We do not know how the burgesses were chosen; op. cit., 220.

[2] 4 Md. Arch., Prov. Ct., 380. It was alleged that Calvert, on his return to the Province, agreed to have restored to every one his own as it was before the rebellion, under the forfeiture of treble damages. Estates settled about that time: John Longworth, December 3, 1646; Henry James, September 23, 1646; Robert Dixon, December 17, 1646; Nicholas Porter, September 25, 1646; Thomas Kendall, November 9, 1646.

[3] 1 Md. Arch., Ass., 184, 210.

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indeed in Calvert's lifetime. At least three acts were passed, though we have the text of but one of them, namely, an act touching judicature, which differed from the act of 1642 chiefly by omitting all reference to the laws of England or to the limitation of the discretions of the Court in criminal cases, and by giving a casting vote to the Governor whenever there was a tie. Another act fixed the sheriff's fees,[4] and still a third granted certain custom duties to the Proprietary on condition that he undertake the whole charge of the government, both in war and peace.[5] The Assembly of 1649 complained of these laws as illegal, but Baltimore supported them[6] warmly and declared that, though the first summons were issued by one who was no lawful lieutenant, yet, being afterwards approved by one who was such an officer, the proceedings thereafter were valid, for the charter permitted the Proprietary to summon the freemen in Assembly as he saw fit, and did not limit him to any form of summons. In truth, if the freemen should meet without summons, though this would be an illegal proceeding, yet if a lawful Governor should afterwards allow thereof and enact laws with the consent of this Assembly, these laws would be valid.

The Last Months of Calvert's Governorship.

On January 2, Lewger, Gerard, and Greene, of the Council, and between thirty-five and forty freemen took the oath of fealty.[1] On November 15, 1646, Baltimore had sent a commission to Calvert and Lewger to collect his rents and debts in Maryland, which commission must have arrived about this time.[2] Some writers thought this commission was a proof that the Province seemed to Baltimore to be definitely

[4] 1 Md. Arch., Ass., 291, confirmed by Laws of 1650, ch. 6.
[5] 1 Md. Arch., Ass., 416, repealed by Laws of 1661, ch. 6. On January 16, 1646–1647, Calvert directed Bretton to see that customs were paid by Ralph Beane for his cargo of tobacco, and to seize any wine or hot waters and to bring tidings of the goods sold by him since coming from Virginia. 3 Md. Arch., Coun., 177.
[6] 1 Md. Arch., Ass., 239, 266.
[1] 3 Md. Arch., Coun., 174.
[2] 3 Md. Arch., Coun., 172. Neill, Terra Mariae, 133.

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lost. Neill, however, thought it was to induce men to pay Calvert and Lewger as agents the debts to the Proprietary which they might refuse to pay them as officials, as they had been ousted from office. A proclamation of embargo, the cause for which was not given,[3] was issued from Inigoes Fort on January 16, forbidding, on pain of death or other judgment of a court martial, any persons to go out of St. Mary's County, or to entertain any one coming from outside the Province or from Kent Island, without acquainting the Governor with the fact. The proclamation was to be in force for a month, at the end of which time it was renewed for a month more. It especially prohibited the export of cattle or corn. These proceedings show the unsettled condition of affairs in Kent. On January 18 Lewger filed an accusation[4] against six men, three of whom had taken the oath of fealty on the second, and all of whom had been pardoned by two several pardons for rebellion and sedition. Several or all of these had secretly fled from the Province and had resorted to the house of one John Mottram in Chicacoan, where on the sixteenth they were thought to have conspired[5] with Baltimore's enemies to kill Captain Price, Thornbury, and Hebden, "who were the chief cause of entertaining the present governor," and to have sent a party to fire, burn, and destroy all they could when a favorable opportunity should come, such as Calvert's going to Kent Island. Four of the defendants were seized as prisoners on their return[6] and, with another, gave security not to leave St. Mary's County without telling the Governor, nor to entertain secret communication with Mottram, with the other two defendants, or with Thomas Lewis. These last three were also accused of returning to Maryland by night[7] and there killing and carrying away cattle and were

[3] 3 Md. Arch., Coun., 174; cf. 179.
[4] 3 Md. Arch., Coun., 175.
[5] Francis Gray, called the speaker, was said to have spoken once again.
[6] 3 Md. Arch., Coun., 177. Two of these, with William Hardwick, were licensed to go to Chicacoan on January 29; op. cit., 180.
[7] 3 Md. Arch., Coun., 178, 179. Only one, Robert Smith, seems to have returned to the Province.

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summoned to appear or be treated as "rebels and robbers." If they should submit, however, and take the oath of fealty, they were promised a free pardon.

On January 19 Calvert ordered[8] a search made at St. Inigoes House to take all goods there found except what the possessors should make oath to have been theirs on February 14, 1644. All claimants to the property were to appear on February 4, on which date the inhabitants of Newtown and of St. Clement's hundreds were summoned to pay rents and head corn at the fort. This looks as if some of the plundered goods had been left at the Jesuits' former residence. In March Calvert[9] sent a boat to Kent, probably commanded by Nathaniel Pope, and on the sixteenth of April Calvert, who had crossed to the island, took the oath of fealty from fourteen freemen there, to whom he issued a proclamation of pardon.[11] On the eighteenth he appointed Robert Vaughan commander of Kent and gave him Cox, Thomas Bradnox, Edward Cummins, Philip Connor and Francis Brooke as a Council. Two days later Calvert directed them to seize the lands and goods of the rebels on the island who had fled or refused to take the oath of fealty, and to hold the property until these rebels had answered at St. Mary's for their crimes of rebellion and refusal of the oath.[12] The extant records of the court[13] begin only on May 13, 1647, though it was in regular session from Jan-

[8] 3 Md. Arch., Coun., 178, 179. Wm. Lewis seems to have been sheriff. He summoned a jury and served writs.

[9] 3 Md. Arch., Coun., 181, 197. 4 Md. Arch., Prov. Ct., 308. Appointment revoked November 11, 1648. Full provision as to appeal to Provincial Court was made. 12 W. & M. Quar., 192, states that Colonel Nathaniel Pope, who settled in Maryland about 1637 and removed to Virginia in 1650, was sent as an agent to Kent Island in 1647.

[10] 4 Md. Arch., Prov. Ct., 331, 336.

[11] 4 Md. Arch., Prov. Ct., 441.

[12] Did Brent go to Kent Island at this time, hiring Francis Brooke's shallop therefor, for which Brooke later brought suit (10 Md. Arch., Prov. Ct., 28)?

[13] 4 Md. Arch., Prov. Ct., 308. Bretton acted as clerk for a time. He had the power of administering oaths and signing writs; 3 Md. Arch., Coun., 180. But 4 Md. Arch., Prov. Ct., 350, 361, proves that the court was meeting regularly from January, 1646–1647.

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uary, when John Harwood was sentenced to be fined and whipped with thirty lashes because, when charged by Edward Parker that in the time of rebellion he had marked divers cattle of other men's wrongfully by way of plunder, he replied, "I hope within this 6 or 7 weeks to be at the marking of a great many more."

On May 31 Calvert directed[14] the collection of the customs, confiscations, forfeitures and escheats, and the gathering of all the neat cattle belonging to Baltimore on the Isle of Kent.

On June 1 Calvert and Greene[15] sat in court, and the proceedings show that matters were growing settled. One man accused another of setting dogs on his hogs, Greene recorded the gift of a red heifer calf to his son, a man sued another for the loss of his rowboat, suits for debts were instituted, and a guardian was appointed for a child formerly brought into Maryland by one now dead.

Leonard Calvert's Death.

But this peacefulness was not long to be enjoyed by Calvert. He was taken ill early in the month[1] and died on the ninth,[2] naming, six hours before his death, Thomas Greene as Governor of the Province and Mrs. Margaret Brent as his executrix. She and her sister Mary, with at least one other woman, Greene and two men, probably servants, were with him at the time.[3] He told Mrs. Brent, "Take all and pay all,"[4] and then asked every one else to leave the room, that he might have private conference with

[14] 4 Md. Arch., Prov. Ct., 308, 309. Does a curious paper in 10 Md. Arch., Prov. Ct., 100, belong to this Kent Island expedition?

[15] 4 Md Arch., Prov. Ct., 309.

[1] It seems Dr. Waldron was called from Va. to try to save him.

[2] 3 Md. Arch., Coun., 187. 4 Md. Arch., Prov. Ct., 312, 314. Baldwin's Calendar.

[3] Where was his wife?

[4] On June 21, the will of Robert Tuttey (a devout but illiterate man) was probated (4 Md. Arch., Prov. Ct., 316, 318, 460), and Nicholas Harvey's nuncupative will was probated on the 28th, pp. 318, 324, 327, 331, 361, 470 (Fenwick administered the estate), 410, 508. Baldwin's Calendar.

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her.[5] Then he called the others again into the room, gave his clothing to his two men-servants, a mare colt to his godson, Leonard Greene, and another to Mrs. Temperance Pippett of Virginia. Near his grave at St. Mary's was erected a monument by the State of Maryland in 1890, bearing the following inscription:

To the Memory of
Leonard Calvert
First Governor of Maryland
This monument is
Erected by
The State of Maryland.

Erected on the Site of the
Old Mulberry Tree
Under which the
First Colonists of Maryland assembled
To Establish a Government
Where the persecuted and oppressed of every creed
and clime might repose in peace and security,
adore their common God, and enjoy the priceless
blessings of civil and religious liberty.

Leonard Calvert
Second Son of George Calvert,
First Baron of Baltimore,
and Anne, his wife,
Led the First Colonists to Maryland,
November 22, 1633—March 3, 1634,
Founded Saint Mary's, March 27, 1634,
Died June 9, 1647.

By His Wisdom, Justice, and Fidelity, He Fostered the
Infancy of the Colony, Guided it Through Great
Perils, and Dying, Left it at Peace.
The Descendants and Successors of the Men
He Governed, Here Record
Their Grateful Recognition of His Virtues.
November, MDCCCXC.

On June 10, 1647, Greene became Governor. Nine days

[5] Thomas, Chronicles of Colonial Maryland, 62, 77, discusses his descendants. The monument to Governor Calvert was unveiled June 3, 1891. On this occasion J. Thomas Scharf, Esq., delivered an address which was afterwards published in pamphlet form.

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later Mrs. Brent came to the court and asked Greene's testimony as to Calvert's will. Greene gave it, taking an oath before Giles Brent, and then Mrs. Brent was granted letters of administration. On June 30 she brought in an inventory, amounting to 23,424 pounds of tobacco, to which a supplement, amounting to 980 pounds, was made on March 11, 1647–8.[6] A large frame house and one hundred acres of town land, a large house and three manors at Piney Neck, and seven horses are the chief items. Furniture, arms, and a few books make up the remainder. His devoutness is shown in such items as a table book and a discipline, a bone cross, a gold reliquary case, a kneeling desk, and a "picture of Paul's." On June 6, 1648, she filed an account in which she also charged herself with Lord Baltimore's debt to the estate, amounting to 18,548 pounds of tobacco, and with other debts, etc., amounting[7] to 13,160 pounds of tobacco. The payments for wax lights, physic, a hearse cloth, debts of the estate, etc., in all amounted to 23,150 pounds of tobacco. Mrs. Brent charged the estate with 5432 pounds for her own salary, with 9522 pounds paid the soldiers, and with 748 pounds paid the Indian chieftainess, Mary Brent Kittamaquund.

Mrs. Brent had much trouble over the estate. As early as July 5, 1647, a suit[8] was filed against it. A second suit was entered on September 3, and the court awarded a verdict for a sum due by bill,[9] but refused to allow a claim, as

[6] 4 Md. Arch., Prov. Ct., 314, 316, 319, 320, 344, 358, 388. For Geoffrey's charge paid from Calvert's salary, see p. 350. He was also given a cow from Baltimore's stock, pp. 350, 358, 424, 456, 494. The cow was sold to Smoot and seized by Fenwick, possibly as the former owed him some money for a survey (p. 318), whereupon Smoot sued Fenwick for the beast. He also sued Mrs. Brent without success, pp. 410, 516, 521, 528. Fenwick acted as Cornwallis's agent and so the latter came into the suit, which dragged on until 1654, when, after a jury decided in Smoot's favor, Cornwallis settled the case by keeping the cow and paying a debt Smoot owed Nicholas Causin. 10 Md. Arch., Prov. Ct., 206, 223, 324.

[7] Among these three is an execution of 2800 pounds of tobacco assigned to Captain Cornwallis by Giles Brent. 4 Md. Arch., Prov. Ct., 389.

[8] 4 Md. Arch., Prov. Ct., 320.

[9] 4 Md. Arch., Prov. Ct., 325, 333, 388 (Nathaniel Pope). On p. 428 Gerard gives her a release, June 7, 1648.

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due by account, for want of specialty, "the Court being tied to follow the rule of the law of England, admitting no recovery upon a dead man's estate without specialty." All sorts of claims were made, among them John Hampton's[10] for service in the Isle of Kent in March previous and for his share of the crop he made for Calvert in 1641.

In April, 1649, the Assembly, in a letter[11] to Baltimore, defended Mrs. Brent's interference in the Proprietary's estate, which he had blamed, and told him that it was "better for the Colony's safety at that time in her hands, than in any man's else, after your Brother's death, for the soldiers would never have treated any other with that civility and respect and, though they were ready several times to run into mutiny, yet she pacified them." Finally, the intrepid woman felt that things were brought to that strait that she must be "declared Baltimore's attorney by an order of Court," and so, on January 3, 1647–48, when Greene and Giles Brent were sitting in the Provincial Court,[12] it was questioned whether, on the death of Leonard Calvert, Baltimore's sole attorney in the Province, Calvert's administratrix was to be received as Baltimore's attorney until the Proprietary made a new substitution. Greene asked Brent his opinion and was told that his sister, the administratrix, ought to be looked upon as attorney for recovering of rights into the estate, paying debts due therefrom and taking care for its preservation, and no farther. In this opinion Greene agreed, and this order was issued, thus preventing matters from going to ruin and a second mischief arising greater than the first. Kilty writes that Mrs. Brent was "very actively employed in taking up lands and in affairs of all kinds relating to property."[13]

[10] 4 Md. Arch., Prov. Ct., 330, 335, 336, 342, 344, 345, 348, 374, 382. Hampton's suit seems to have failed. In it Brent appeared for his sister, and his claim of the privilege of an administrator was allowed.

[11] 1 Md. Arch., Ass., 239.

[12] 4 Md. Arch., Prov. Ct., 358. 2 Bozman, 315, comments on Brent's sitting as a judge in a case in which his sister was so nearly concerned.

[13] Kilty, Landholder's Assistant, p. 104.

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The Soldiers in the Fort.

On June 11 Captain John Price, who commanded the fort at St. Inigoes, told Greene that there was great want of corn toward the maintenance of the soldiers.[1] Greene at once issued order that any corn in a planter's possession, more than was needed for his family's use, "should be passed at the market price of 120 lbs. per barrell" upon his Lordship's account for the maintenance of the fort. Five barrels, probably of Cornwallis's crop, were at once taken from Fenwick. Bozman[2] remarks that their seizure must have been made under the palatine regalia, either by purveyance, whereby provisions for the royal household might be seized and paid for at the common rate, or by the prerogative of pressing provisions in time of war. The support of these soldiers, before Calvert's death, caused much trouble. Those whose cows had been killed to feed the garrison brought in claims.[3] Captain Price, after Calvert's death, on behalf of the whole garrison, sued[4] Mrs. Brent, as his administratrix, for 45,600 pounds of tobacco and cask and 100 barrels of corn for soldiers' wages, and was granted an attachment on all Calvert's estate. In January, 1647–8, Lieutenant William Evans and William Bretton demanded their salary as soldiers in the forts,[5] and Greene sold two yearling heifers from Baltimore's stock "towards soldiers' payment."[6] Henry Hooper sued for a debt for "salary and

[1] 4 Md. Arch., Prov. Ct., 312. On June 12 two soldiers' recognizances to Jas. Lindsey, one of Leonard Calvert's men-servants, for 110 pounds were filed, as well as the bonds of four other men for various amounts.

[2] 2 Bozman, 309.

[3] 4 Md. Arch., Prov. Ct., 323, 350, 374.

[4] 4 Md. Arch., Prov. Ct., 338, 357, 359. As a result of this attachment, judgment on another debt which she admitted was respited, as she could give up no part of the estate until she answered the former suit (op. cit., 353). A later soldier's suit for a salary; op. cit., 374, 382 (Edward Hull).

[5] 4 Md. Arch., Prov. Ct., 358, 364, 366. Bretton as clerk of fort sues for his fees in December. 4 Md. Arch., Prov. Ct., 355.

[6] 4 Md. Arch., Prov. Ct., 365. Did Mrs. Brent sell cattle for the same purpose (378, cf. 367)? She certainly gave a cow in payment of wages on February 26, 1647–1648; op. cit., 373. A suit is brought in Kent for corn supplied St. Inigoes Fort in June, 1648; op. cit., 394,

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chirurgery in the fort of St. Inigoes."[7] John Hampton sued Mrs. Brent for his wages, on October 5, 1648, and she denied the debt, as it was for "public employment" and she had no assets to pay it, since Leonard Calvert's estate, by act of Assembly, was to be "applied to the payment of the garrison soldiers of St. Inigoes' Fort."[8]

Captain Hill's Claims.

After Calvert's death a letter came to him from Hill, asking his "salary in that unhappy service:" viz., half the custom, half rents, and satisfaction for a horse he claimed Calvert had promised him. Greene answered Hill's letter on the nineteenth, stating that he did not as yet understand the business and asking that Hill's attorney[1] be sent to press his claim. The note was a conciliatory one, and Greene promised to pay whatever might be found due. In November Hill made John Hollis, or Hallowes, his attorney in Maryland,[2] and on June 10, 1648, before the Provincial Court, composed of the Governor, Brent, and Gerard, Hill demanded[3] half of the Proprietary's rents and half the customs for the year 1646, claiming that they were "covenanted unto him by Leonard Calvert, Esq., for his service in the office of Governor." The court admitted the justice of his claim and ordered it to be paid.[4] Hardly had Greene as-

411, 414, 416. On p. 413, in September, 1648, Fenwick demanded of Mrs. Brent a sum for a month's use of a sloop. She gave William Whitle a cow in part payment for wages in January, 1648; op. cit., 449, 469, 475, 480, 482, 489. Some of the soldiers were still unsatisfied in 1649. See 10 Md. Arch., Prov. Ct., 6. In same volume, pp. 24, 40, is record of Henry Brooke's suit for a gun taken from him in the late troubles by Governor Calvert's direction.

[7] 4 Md. Arch., Prov. Ct., 379, 383. The debt was not paid during his life, and his executor assigned it in 1653. 10 Md. Arch., Prov. Ct., 321.

[6] 4 Md. Arch., Prov. Ct., 419. 10 Md. Arch., Prov. Ct., 242, 339.

[1] 4 Md. Arch., Prov. Ct., 315.

[2] 4 Md. Arch., Prov. Ct., 341.

[3] 4 Md. Arch., Prov. Ct., 389, cf. 351, 352.

[4] 4 Md. Arch., Prov. Ct., 408. Later Hallowes made Captain Francis Poytres Hill's attorney, and he in turn appointed George Manners as attorney. Suit was brought by Manners in February, 1648–1649, as Hill's attorney, against Mrs. Brent, for the debt alleged to be due Hill from Leonard Calvert; op. cit., 469, 472.

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sumed his new office when Edward Hill from Chicacoan, on June 20, 1647, wrote[5] to Greene and Brent, signing himself, "your loving friend," and asking a speedy answer. He insisted that he had rightfully been chosen Governor during Calvert's absence, as the Council had the immediate power to choose him, and the safety of the Province made it needful for him to act "independent of any contradiction but his Lordship." In fact, he maintained that Calvert's invasion was unlawful, or the Marylanders were slaves. He claimed that the government of the Province was "inherent in me, till his Lordship's pleasure be further known." Hill had suffered great losses of fortune and credit and his friends had been "ruinated by the unjust breach of the composition." Therefore, he feared he might be forced to "some strange overture," though preferring "some moderate way," being "unwilling to move the stone violently." By Calvert's death the opportunity had come for the Council to acknowledge Hill as Governor, and then "peace may breathe a quiet possession." He little hoped for this, however, and wrote to "give a fair demonstration to the world and his Lordship of all proceedings." If the Marylanders would not accept him,[6] "others of humors different" from his, who "embrace a parliamentary influence," might "prove fatal to the whole." On June 12 Sir William Berkeley, the Governor of Virginia, wrote Calvert. Greene answered the letter.[7] We learn that Berkeley had asked that justice be done Hill. Greene replied that justice was never denied him "by the noble gentleman deceased," nor would Greene deny it, but he asked Berkeley to "take some effectual course

[5] 4 Md. Arch., Coun., 188. On July 28 Greene authorizes Bretton, register of the court, on urgent occasions or in the Governor's absence to sign writs or warrants in his name. 4 Md. Arch., Prov. Ct., 323. Bretton was sick in August and Robert Clark was appointed temporarily as his successor; op. cit., 324. On Greene, see Davis's Day-Star, 181, where he is said to have several times married and to have had four sons.

[6] 4 Md. Arch., Prov. Ct., 351, 352. A demand was made in December, 1649, upon Hill to pay a tax levy upon one John Thimbleby, who went with him to Virginia.

[7] 3 Md. Arch., Coun., 190. 4 Md. Arch., Prov. Ct., 315. Berkeley also answered a query concerning a mare.

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that Captain Hill may not by his evil designs and practices proceed to disturb" the peace, as he had planned to do, by invading the Province from Virginia. Greene willed not that "this Colony should be further imbued in the effusion of blood, if it may be avoided," but was "fully determined to give him his due and deserved punishment, whenever we shall be invaded" by him. The governorship had fallen on Greene, by Calvert's nomination, and he would defend, with God's help, all of Baltimore's right and title to Maryland. On June 21 Greene answered Hill's letter, from St. Inigoes Fort, denying that the Council had right to nominate Hill as Governor,[8] as he was not a Councilor. He feared not Hill's threats and was now lawfully installed as Governor. If Baltimore should appoint Hill, Greene would readily resign to him; but he would defend his rights and not be allured to a resignation by Hill's "boasting threats and other vain persuasions."

Hill had his partisans in Maryland. One of them, James Johnson, about July 3, told Richard Bennett: "I hope within a time to see a confusion of Papistry here. You and all the soldiers who came from Virginia with Calvert were rogues and have undone a brave country. Had it not been for you, we might have enjoyed this country to ourselves and our progeny after us." Bennett answered, "There were in the Governor's company as honest men as yourself." "Nay," replied Johnson, "they were all rogues. I shall justify it. Go down and certify the Governor of my speeches. If you complain to the Governor, I regard it not; for I care no more for him, than for any of the rest. I'll give anyone a rogue's mark, who relates what I say. O, that Capt. Hill would come and reassume the government! If he were come and I could see Capt. John Price pressing soldiers to resist him, with not above two others in his company I would shoot him." Bennett told the whole conversation to the Provincial Court, and Johnson was fined in two thousand pounds of tobacco, whipped with thirty

[8] 3 Md. Arch., Coun., 189.

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lashes for his mutinous speeches, and bound to keep the peace and not molest Bennett.[9]

Indian Troubles in 1647.

On July 4 Greene commissioned John Price[1] to take thirty or forty men, chosen by him, with sufficient arms, and to go to the Indian towns of the Nanticokes and the Wicomicoes and destroy them, in return for their incursions on the planters and their refusal to conclude a peace. He might kill them or take them prisoner, burn their houses and destroy their corn, in his discretion. No division of booty was to be made until he should arrive at St. Inigoes on his return and give just account of all the plunder. He might appoint his subaltern officers and rule his troops by martial law. Two parties set out. When they reached the Indian camp,[2] on the Eastern Shore, Lieutenant William Lewis drew his sword, pulled a mat from off the "house" and, entering it, brought forth an Indian woman and child, whom he delivered to the guard. As he went in an Indian "bolted out," and Evans ordered his men to fire at him. Later, the two parties of troops came together, and Price bade the company to march, doing no wrong to, taking nothing from, nor shooting at any Indian. So the company marched nearly twenty-six miles back without firing. But as the Indians, who gathered "in great companies" about the Marylanders, shot "a man of ours in the rear," Price commanded his company to give fire. We know no more of the expedition.

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[9] 4 Md. Arch., Prov. Ct., 321, 324. In August an affidavit was made that Mr. Broadhurst in June said: "There is now no Governor in Maryland, for Captain Hill is Governor, and some of the soldiers will sell their country for their wages. They are a company of silly rogues who can think anybody will give any thing for the country."

[1] 3 Md. Arch., Coun., 191. In 1648 Price was made "muster master general" for his "abilities in martial affairs" and for his fidelity during the plundering year.

[2] 4 Md. Arch., Prov. Ct., 373.

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Aftermath of Ingle's Rebellion.

The country was still troubled with vague terrors. On September 11 Thomas Bradnox and Edward Cummins, two Kentish men, swore[1] that Nathaniel Pope, who had been sent by the Governor as an agent to Kent, in March, played false and said to one: "The Governor makes large promises unto you, yet you shall find that there will be nothing performed by him, but his words are mere delusions. If we do not stand true hearted to one another we shall be betrayed." He tried to "animate the people to avoid (*i. e.*, desert) the Island," and said to them: "If you will come and live at Appomatocks, I make no question but, in short time, we shall get strength enough to get the Country again. You may insure yourselves that the tobacco, which I demand of you, I shall assuredly have, for I am coming up, as soon as I return, with a great company of soldiers." On September 15 Greene ordered[2] that a oath of fealty to the Lord Proprietary and his Governor should be taken by all persons who were concerned in the rebellion, and that whenever they came to the Province the captain of the fort should take their arms and ammunition, and should keep them until the owners left Maryland. The oath bound those taking it to reveal, within twenty-four hours, all conspiracies discovered against the government, and not to try to draw any of the inhabitants of Maryland to forsake the Province. None of those who were concerned in the rebellion should have hearing in court, or be permitted to stay in the Province, till the oath was taken. Calvert's May proclamation was continued until Christmas, and no one was allowed to admit to his house any of the late rebels unless the latter bore a certificate that he had taken the oath of fealty.[3] During Greene's administration fourteen men are recorded as having taken the oath in 1647, eleven in 1648 and four in 1649.

[1] 3 Md. Arch., Coun., 192. 4 Md. Arch., Prov. Ct., 331, 333.
[2] 3 Md. Arch., Coun., 193. The longer and typical oath of fealty is on p. 196.
[3] 3 Md. Arch., Coun., 228.

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Fearing a scarcity of corn, on November 10, 1647,[4] Greene issued a proclamation forbidding its exportation. At the same time, to increase the stock of horses, he forbade that any horses, mares or foals be exported. These proclamations Bozman justifies[5] under the ordinance-making power conferred by Baltimore in the charter, and because the delay of summoning an Assembly and the uncertainty of its action in these troublous days made it inadvisable to wait for legislative initiative.

On March 4, 1647–8, Greene issued a proclamation of pardon[6] to all the inhabitants of the Province who were in rebellion by Ingle's instigation between February 14, 1644–45, and April 16, 1647, but who were returned now in obedience, and also to all those out of the Province who should acknowledge their sorrow and ask pardon before St. Michael's feast.

Provincial Court Proceedings Under Governor Greene in 1647.

Of miscellaneous cases before the Provincial Court we find an unsuccessful action of battery[1] brought on June 23, in which one man was accused of running at another with a naked sword, and an order on June 30 to return a runaway servant to Virginia.[2] On July 28 an attachment was brought for a boat, and Greene claimed a gun as his.[3] In September[4] the nuncupative will of Richard Cox was probated,[5] and in his inventory are found two pairs of brick moulds, one of the many proofs that bricks were early made

[4] 3 Md. Arch., Coun., 194.
[5] 2 Bozman, 313.
[6] 3 Md. Arch., Coun., 195. Ingle is especially excepted from the pardon. 4 Md. Arch., Prov. Ct., 441.
[1] 4 Md. Arch., Prov. Ct., 318. A slander case is docketed on June 19, but is no more heard of; op. cit., 314.
[2] 4 Md. Arch., Prov. Ct., 319; see 327 for two other cases, in one of which the articles of indenture are given in full.
[3] 4 Md. Arch., Prov. Ct., 322, 411, 423, 431.
[4] Quittances, as one given by Fenwick for freight or cattle from Accomac, frequently appear. 4 Md. Arch., Prov. Ct., 323.
[5] 4 Md. Arch., Prov. Ct., 326–328, 333, 368, 489, 511. The estate was insolvent. Baldwin Calendar.

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in the Province. A deed of gift of cows and swine, from a woman to her children, was recorded.[6] In a suit to recover two cows the court allowed oral testimony as to a judgment given by Captain Hill, as certain leaves were missing in the records.[7] A defense was upheld that an account, being a specialty, need not be delivered by any law of the Province.[8] A cow, promised by Calvert out of Baltimore's stock, was ordered to be delivered, and, as Fenwick claimed that Captain Price delivered one of his and not of Baltimore's, quite a controversy arose. One Blanche Oliver claimed[10] that Governor Calvert had killed her ox at St. Thomas's Fort and had promised another in its place. She later married Humphrey Howell, and in June, 1648, sued[11] Nathaniel Pope for satisfaction for a cow[12] which Pope, or "some of his complices in time of the rebellion," killed at the fort and for which he promised her satisfaction. He did not admit the killing or the promise and said that, in any case, such actions had been taken away by act of Assembly, but the court[13] awarded her a cow in damages. Two hired servants, whom Lewger and Brent, as commissioners for the Proprietary's private estate, had employed for Rev. Mr. Gilmett, complained[14] that they had never received the cow and calf apiece and the ox which had been promised them, and Brent admitted the contract, adding that owing to the troubles which followed he knew nothing of any payment made. An occasional will or other testamentary matter was recorded.[15] A man sued another for corn

[6] 4 Md. Arch., Prov. Ct., 329.
[7] 4 Md. Arch., Prov. Ct., 332.
[8] 4 Md. Arch., Prov. Ct., 333.
[9] 4 Md. Arch., Prov. Ct., 333–335, 343, 415, 422, 425, 433, 447. Fenwick lost.
[10] 4 Md. Arch., Prov. Ct., 334, 336.
[11] 4 Md. Arch., Prov. Ct., 422–424 (June, 1648), 453, 471. 10 Md. Arch., Prov. Ct., 96.
[12] Robert Clark, on November 6, 1647, recorded the gift of a brown, bobtailed cow called Five Pints, as well as of a black and white pied heifer called Py, to his daughter.
[13] 4 Md. Arch., Prov. Ct., 341.
[14] 4 Md. Arch., Prov. Ct., 336.
[15] *e. g.*, William Cox, 4 Md. Arch., Prov. Ct., 338. That of John Tompson, dated February 19, 1648–1649, is wrongly placed. 4 Md. Arch., Prov. Ct., 337. Baldwin's Calendar.

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spoiled in the field by the latter's neglect.[16] Another suit[17] arose from one man's wrongfully taking corn from the field. Still other suits arose over the ownership of an iron pot,[18] of a gun,[19] or of a boat.[20] In this last case the damages for detaining the boat were assessed by two arbitrators.

Suits for beaver[21] still occurred, cows were[22] "sequestered" to pay for debts, the sale of cattle was recorded,[23] a man sued another for damages sustained in staying at St. Mary's to prove a cutlass to be his which the other sold him and which a third person claimed,[24] and a suit was brought for a sum of tobacco "for the cure of a wound" which the defendant gave the plaintiff.[25]

Greene's Assembly.

The Assembly, which[1] met in Lewger's house, January 17, 1647–8, was the first to sit under any other presidency than that of Leonard Calvert. Thomas Greene called it[2] on December 14, to come together on January 7. The summons[3] was directed, not to the sheriffs, but to all freemen, calling them to appear personally or by proxy,[4] and Greene cautioned all to choose proxies "whose able judgment and fortunes may render them more considerate to the weale

[16] 4 Md. Arch., Prov. Ct., 342, 344, 345.
[17] 4 Md. Arch., Prov. Ct., 339.
[18] 4 Md. Arch., Prov. Ct., 342, 345, 347.
[19] 4 Md. Arch., Prov. Ct., 342, 346.
[20] 4 Md. Arch., Prov. Ct., 343, 345.
[21] 4 Md. Arch., Prov. Ct., 346. On p. 362 a power of attorney is filed, January, 1647–1648, by Hugh Dunne, given him by Lawrence Marshall, grandfather and guardian of Agnes Marshall, whose father was a Marylander. On the strength of it, Dunne asked to be made administrator of Richard Marshall, and this request was granted; p. 365. He later sold cows of the estate, pp. 341, 374.
[22] 4 Md. Arch., Prov. Ct., 350, 353.
[23] 4 Md. Arch., Prov. Ct., 371, 372, 375; Governor Greene gives his son, Robert, a red heifer to advance him a portion, 373.
[24] 4 Md. Arch., Prov. Ct., 370, 375.
[25] 4 Md. Arch., Prov. Ct., 371.
[1] 1 Md. Arch., Ass., 230.
[2] 1 Md. Arch., Ass., 213.
[3] He says *Delegates;* is not this old proxy-giving the origin of the name of our House of Delegates?
[4] 2 Bozman, 317.

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publique." On January 7 the St. Mary's men came together, but none from Kent were present, so that he adjourned the Assembly for a month. Vaughan came from Kent Island a few days later, and on January 11 Greene summoned the St. Mary's freemen to be present on the seventeenth. Bretton, the clerk,[5] did not then appear, and the Assembly awaited his arrival,[6] finally organizing at St. John's on Thursday, January 21. Sixteen men, holding ninety-three proxies, "and divers other inhabitants," came together in the morning, and one more, bearing twenty-nine proxies, came later in the day. Thus began the first long session of the Assembly, for it was not dissolved until March 4. Greene held no proxies and Captain Robert Vaughan, who bore twenty-six proxies, was the only man from Kent. No Councilors seem to have been present[7] until Brent came on February 21, and Cuthbert Fenwick was the only other person of any distinction in the body.

The Assembly at once resolved[8] that any Councilors who might be present and sixteen named freemen should constitute the Assembly, ten of whom should constitute a quorum sitting in one house with the Governor and clerk. Six of these persons had not yet appeared, though they did so later, and four of those present, holding six proxies, were not named. On Saturday two of the sixteen went away, substituting others in their places, and this precedent, authorized by the rules of the House, was several times followed during the session.[9] The sixteen, or their proxies, are spoken of as "the freemen bound to attend the Assembly," and the House was adjourned by the Governor

[5] It is not stated who appointed him clerk, probably the Governor. He seems to have had a vote.

[6] 1 Md. Arch., Ass., 218. On February 10 Bretton was absent, and Greene appointed William Lewis to take his place for the day. 1 Md. Arch., Ass., 223, and again John Lewger, Jr., 1 Md. Arch., Ass., 224.

[7] 1 Md. Arch., Ass., 224.

[8] 1 Md. Arch., Ass., 215. The bill was probably prepared in advance and was passed and signed by the Governor at once.

[9] 1 Md. Arch., Ass., 215, 216. If no proxy appeared and if a quorum was present without him, the member might be fined.

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from day to day.[10] On the twenty-fourth it was ordered that no one but the sixteen freemen[11] or their delegates, assembled with the Governor and clerk, should have vote or seat in the House after the general day of sessions. Bozman[12] thought this last phrase, whose meaning is uncertain, might refer to the date for which the session was called, viz., February 7; but there seems to have been no change, after that day, in the constitution of the House. Another suggestion is that it refers to the last day of the session, for in the rules[13] of the House, adopted Friday, January 21, it was provided that three days "before the general day of sessions for the enacting of laws" notice should be given to all the freemen of St. Mary's to make personal appearance, if they cared to do so. No record is found that this summons was ever sent, or that any more freemen appeared on that day.

On this second day of the session came Mrs. (or Miss, as we should now call her) Margaret Brent, Giles Brent's strongminded sister, and "requested to have vote in the house for herself and voice also."[14] This remarkable plea was made not for her own interests, but because she was Leonard Calvert's administratrix and so the Proprietary's attorney, and it is no wonder that, in the absence of her brother and of all the other Councilors, she feared Baltimore's rights might suffer. Greene denied that Mrs. Brent should have any vote, saying nothing as to her voice. She then "protested against all proceedings in this present Assembly, unless she may be present and have vote."

Another claimant of the right to vote was Nicolas Gwyther, who came on Wednesday, the twenty-sixth, and

[10] 1 Md. Arch., Ass., 216.
[11] 1 Md. Arch., Ass., 217.
[12] 2 Bozman, 320.
[13] 1 Md. Arch., Ass., 216. Other new rules provided that no one should come into the House with a weapon, that misdemeanors happening in the House should be censured and fined by that body, that he who spoke must do so standing "reverently and bareheaded, directing his speech to the Governor."
[14] 4 Md. Arch., Prov. Ct., 358. 1 Md. Arch., Ass., 215.

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petitioned to have a vote as a freeman.[15] Fenwick said, "He is not a freeman, but owes me service." On Saturday the House heard his petition and "censured" that no service was due Fenwick by Gwyther, "but that the produce of his labor, over and above his necessary maintenance, after the war was done, should be coming to Mr. Fenwick," and Gwyther must render account. He did so on Monday, showing what he had paid for expenses from the taking of St. Thomas's Fort until the beginning of November, 1646, and the House, approving of the account, ordered Fenwick and Gwyther to give each other quittances. The whole proceeding is a curious combination of legislative and judicial functions.

On Monday, January 24, the Assembly agreed to an order for the levying of corn toward defraying the wages of the soldiers.[16] When Calvert raised his army in Virginia for the reduction of the Province, he promised the soldiers that the wages of the men and the other charges of the expedition should be paid from his and Baltimore's estates, and if these should not be sufficient he would engage the Province even with the sale of his Lordship's patent. This promise was understood by the Provincials to cover also the support of the soldiers in the garrison at St. Inigoes, after Calvert's return to power. The disturbed condition of affairs during 1647 had caused a scarcity of grain, so that the soldiers were rendered dissatisfied and mutiny was feared. "His Lordship's attorney, Mrs. Brent, had no corn left on his estate, having distributed to the soldiers all there was and can provide no more at present."[17] To prevent mischiefs the Assembly, apprehending that there was a considerable quantity of corn concealed by divers persons for their private interests, resolved to have it purchased from the owners,

[15] 1 Md. Arch., Ass., 218, 220, 222. 4 Md. Arch., Prov. Ct., 354.
[16] 1 Md. Arch., Ass., 217, 226, 229. 2 Bozman, 320.
[17] On February 29 three soldiers petitioned for themselves and others for wages due from Mrs. Brent, and she promised with all speed to send tobacco to Virginia to buy diet for them. 1 Md. Arch., Ass., 226. On Mrs. Brent, see G. W. Brown's Origin and Growth of Civil Liberty in Maryland, p. 16.

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under direction of the Governor, and distributed among the soldiers. Sworn officers should view every man's corn and press all found above two barrels for every head, except sucking children, and deliver it to Mrs. Brent for the soldiers' use. The corn was to be paid for in tobacco, or an equivalent of corn to be restored next year by Mrs. Brent; and forfeiture of the corn concealed, with a fine of double its price, was the penalty to be visited upon those who concealed their store.

Greene's proclamations of November 8, 1647, concerning the exportation of corn and the preservation of the increase of the stock of horses, were also confirmed[18] to remain in force until he should revoke them, but on March 4 the House determined that the order for levying corn and the proclamation should remain in force only during the present Assembly.

On January 25 began a struggle to pass certain acts for governing the Province and for repealing the customs act of 1647, of which struggle we have but meager details. After some days, when Greene probably showed his objections to repealing the customs act,[19] a protest was filed, signed by all the sixteen freemen then present and by the clerk, holding in all one hundred and thirty-five proxies, "against all the laws which are now pretended to be in force by the last general Assembly, concerning that they were not lawfully enacted, for that no summons was issued out to all the inhabitants, whereby their presence was required by lawful authority." Calvert, as will be remembered, had reconvened, in 1647, the Assembly first summoned by Hill, and the objection of the freemen may well seem to us a "frivolous" one, the real ground, doubtless, being that the act for customs was "found too burthensome and in-

[18] 3 Md. Arch., Coun., 194. 1 Md. Arch., Ass., 223. On February 3 the house was adjourned by the Governor upon request of the major part of the freemen assembled.

[19] 2 Bozman, 325. 1 Md. Arch., Ass., 220. Baltimore wrote, in August, 1649, that Brent was prime mover in this (1 Md. Arch., Ass., 267), and that he protested against the remonstrance as seditious.

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convenient." On the next day[20] Greene, who stood alone for the Proprietary's interest, ordered to be entered on the minutes a statement that the protesters "falsely pretended an unlawfulness" in the acts, and that, against their protest, Greene in turn protested, declaring the Assembly of 1647 to be lawful and its acts Statutes of the Province. "In the face of this present assembly," the bold man added, "I shall, to the utmost of my power, by virtue of his Lordship's commission given to me in that behalf, see the due observance of the same throughout all the parts of the Province, until his Lordship's disassent thereto shall appear under his hand and seal." Truly Mrs. Margaret Brent was not needed to defend Baltimore's interests while he had so dauntless a lieutenant. The bill "touching the Governor" caused another struggle between Greene and the delegates, during which he adjourned the House from January 31 to February 21. On this last named day[21] Giles Brent came, and after that sessions were again held almost daily until the final adjournment on March 4. On February 21 Brent, Vaughan, and Fenwick were appointed a committee to draw up a remonstrance "concerning the aggrievances of the Province," and they did so, reporting it on the next day. It was amended on the day following, but unfortunately we know not what the remonstrance contained. It seems to have led to "an act for settling government in the Province, as the present state of things will permit." This bill had ten clauses; the first was concerned with soldiers' wages, and, though Greene seems to have approved of it, Baltimore dissented in August, 1649, because it insisted on the payment coming from Baltimore's private estate.[22] The second clause, with reference to court days,[23] was enacted and continued in force until 1676, providing for six sessions of the county courts each year, at which either party could ask for

[20] 1 Md. Arch., Ass., 221.
[21] 1 Md. Arch., Ass., 224, 225.
[22] Baltimore also vetoed the preamble. 1 Md. Arch., Ass., 226, 229, 267. The vetoing of separate clauses in acts is seen to be no new feature of government.
[23] 1 Md. Arch., Ass., 232.

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a jury and the judges should decide the causes "according to the laudable customs of this Province and according to equity and good conscience." The third clause, touching levies and judgments, was approved by[24] Greene, but vetoed by the Proprietary as it nullified the acts made by the Assembly of January, 1646–7. He also vetoed the fourth clause, touching officers' fees, and the fifth, touching the oath of fealty, as it spoke of the "pretended" Assembly of 1646–7. The sixth clause, for defense of the Province from the Indians, and the seventh, touching the fort at St. Inigoes, became law, but the text is lost.[25] The eighth clause, touching the remonstrance, had all but two of the sixteen freemen for it, but Greene vetoed it, as he did the ninth, touching the Governor.[26]

The grievance of attachments and executions caused the passage of an act[27] providing that no such process should be laid on goods of any inhabitant, unless he were not resident in the Province at that time, that execution should not deprive the settlers of all livelihood for the future, but that "corn for necessary maintenance and bedding, gun, axe, pot, necessary laborer's tools, household implements, and ammunition" of residents should be exempt from execution. Fugitives were to have no benefit of this law. Another statute[28] for the debtors' benefit established a period of limitations of nine months on contracts, not by specialty, made before the close of the session, and provided that no recovery should be made upon any dead man's estate after nine months, except for debts made known before that time or made in writing, and that no specialty should be assigned without consent of the debtor. A curious law, to endure ten days after its publication,[29] decreed that no one should

[24] 1 Md. Arch., Ass., 219, 224, 226, 229, 267.
[25] A seventh clause touching general pardon had been rejected by the House. Brent voted aye, Bretton nay.
[26] 1 Md. Arch., Ass., 228.
[27] 1 Md. Arch., Ass., 232.
[28] 1 Md. Arch., Ass., 233. On April 29, 1650 (1 Md. Arch., Ass., 298), Price, Vaughan, Fenwick, Manners, Bretton, and Hatch, who had been of this Assembly, told the Assembly then sitting what they meant by the act, which meaning was then confirmed.
[29] 1 Md. Arch., Ass., 233.

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deliver guns or ammunition to any pagan for killing of meat or for any other purpose, except that the Governor, for his own use, might employ one pagan at a time and might deliver arms and ammunition to friendly pagans for the defense of the Province.

A number of judicial matters were heard by the Assembly.[80] Thomas Oliver, a servant of Cornwallis's, was discharged from further service, as Fenwick, the captain's attorney, could not "perform the cure" according to condition. The Assembly, as court of appeal, censured[81] that John Hatch, the sheriff, acted rightfully in levying execution on Francis Posey's estate. Thomas Thornborough received from James Neale's attorney the latter's plantation, provided that he "would come into the county and seat upon it." Calvert had confirmed this grant "before his last coming into the Province to reassume the government," and now the freemen unanimously bound themselves to save Thornborough harmless and to stand between Neale and him, so that he might enjoy the plantation.[82] The freemen also voted that they could not find that Calvert had ever given Thornborough a horse which he had promised him. Mrs. Brent, as Governor Calvert's administratrix, had sued[83] Thomas Gerard for 5359 pounds of tobacco on December 2, 1647, and a jury had awarded a verdict of 1994 pounds and costs 174 pounds. She assigned the judgment to Edward Parker and he demanded satisfaction from Gerard's attorney, who was the sheriff, Hatch. The House ordered Hatch to give Parker three bills due Gerard, amounting to 2232 pounds of tobacco, Parker being responsible for the 64 pounds "overplus."

After this Mrs. Brent, as attorney for the Proprietary, asked that her cause might be tried by the House against

[80] 1 Md. Arch., Ass., 220.
[81] 1 Md. Arch., Ass., 221. 4 Md. Arch., Prov. Ct., 325, 330, 335, 365.
[82] 1 Md. Arch., Ass., 221, 223. 4 Md. Arch., Prov. Ct., 343, 347, 355, 368.
[83] 4 Md. Arch., Prov. Ct., 348, 349, 351–352, 372. 1 Md. Arch., Ass., 225. Gerard married Susanna, sister of Justinian Snow. Neill's Founders, p. 97.

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Gerard for five thousand pounds of tobacco for "violently and contemptuously" transporting out of the Province six hogsheads of tobacco without paying or giving security to pay the customs, thus breaking the Provincial statute.[84] On December 13 she had brought her suit in the Provincial Court, and now certain members, speaking in Gerard's behalf, had the case postponed, as there was no proof that he had received notice of the former proceedings and as he had no attorney present. I find no further disposition of the case.

William Eddis sued the administrator of Thomas Weston for clothes, etc., due for his service, and was granted three hundred and thirty-seven pounds of tobacco.[85] Captain William Stone sued the same estate for a debt of £135 and interest for twenty-two years. The administrator denied that interest was due and the Assembly agreed with him; but it gave judgment for the principal and awarded execution upon the lands, as the personal estate was not sufficient, unless in two months the Virginia administrator should bring in his account.

The House tried in vain to bargain with the scouts or rangers,[86] but its committee of six selected to allow accounts and appoint the assessments made grants against St. Mary's County for bringing word touching the Susquehannocks and for apprehending and imprisoning five Indians who were suspected of felony. The St. Mary's men objected, but the Governor overruled their objection. The charge of the session against St. Mary's amounted in all to 7752

[84] 1 Md. Arch., Ass., 225. 4 Md. Arch., Prov. Ct., 355. The act must have been the one passed on January 2, 1646–1647. Query, was the case settled by the transaction noted (4 Md. Arch., Prov. Ct., 428)?

[85] 1 Md. Arch., Ass., 228, 230. Tobacco at 1½d. per pound. To this claim of Stone's there are references in 4 Md. Arch., Prov. Ct., 376, 482, 486, 489, 511. 10 Md. Arch., Prov. Ct., 4.

[86] 1 Md. Arch., Ass., 227, 228, 230–232. Part of Vaughan's allowance was charged against St. Mary's in March. The committee declined to make the assessment until October, as they could not then make a true estimate of the number of people now planting. Kent seems to have paid 1702 pounds. 4 Md. Arch., Prov. Ct., 406, 426, 428.

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pounds, which was divided by the freemen of the county at the house of the Governor on June 14 among the tithables at fifty-five pounds a head, showing one hundred and forty-one such inhabitants.

Minor Matters in 1648.

On April 5, 1648, we find[1] that the Governor had no Councilor present to hold Provincial Court with him, and so "ordered that all causes should be tried by a jury of twelve men," but on the next day he appointed William Bretton judge of the court in a cause and Bretton adjudged for the plaintiff. At this time most complicated claims for the ownership of a "blackish brown pyed cow" and of a "black pyed heifer" were adjudicated,[2] another claim of a "brownish pyed heifer," taken up from among several wild cattle, was instituted,[3] and in later courts viewers were appointed to inspect the animal, and she was declared by a jury to belong to the defendant. In all these cases fraudulent alteration of the ear-marks was alleged. Among these suits for cattle are scattered suits for wages,[4] for killing a boar,[5] for detinue of a canoe,[6] for five years' service due by indenture,[7] and for transporting unlawfully from St. Mary's to Kent a pestle, two persons, and the estate of a third person which lay under execution.[8] Apparently the plaintiff in the last suit, George Manners, sheriff of St. Mary's, lost his case in regard to the pestle, but won as to the transportation of the two men, for which act Cummins was fined in November. The defendant, Edward Cummins, at once brought countersuit for slander, as Manners charged that he had stolen the pestle, and Cummins obtained a verdict

[1] 4 Md. Arch., Prov. Ct., 379.
[2] 4 Md. Arch., Prov. Ct., 379–384; cf. 385, 388.
[3] 4 Md. Arch., Prov. Ct., 383, 384, 416, 431. 10 Md. Arch., Prov. Ct., 41.
[4] 4 Md Arch., Prov. Ct., 384.
[5] 4 Md. Arch., Prov. Ct., 387.
[6] 4 Md. Arch., Prov. Ct., 385.
[7] 4 Md. Arch., Prov. Ct., 385.
[8] 4 Md. Arch., Prov. Ct., 385.

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for three hundred pounds of tobacco.[9] Manners was ordered to ask forgiveness in open court. Cummins himself was a man of intemperate speech and had to apologize to Francis Brooke for calling him perjured.[10] As soon as Manners's suit against Cummins was concluded, Mrs. Brent, as "His Lordship's Attorney," brought one against Cummins for taking persons and goods out of the sheriff's hands and for "uttering words of great contempt" against the Governor and the "authority of the government."[11] Manners testified that he forewarned Cummins, being sent unto him by the Governor, not to carry away these persons, and Cummins answered, "How durst the Governor send such word to forewarn me, for I shall obey no such order, for there is no law in the Province and I will carry them away." Brent and Greene were sitting in court, and Brent "censured the defendant to be fined" for both these offences, in which censure Greene agreed.

There was no judge of testamentary causes in the Province,[12] and the Provincial Court had no power to grant letters of administration, so that when John Thimbleby came before it on May 2, 1648, with the will of Peter Makarell,[13] the court ordered him to collect the estate, have it appraised, and bring in an inventory and account whensoever he was called by the judge of testamentary causes. Tales were current in May, 1648, that the enemies were "actually on foot intending to invade" the Province. Because of this danger and the inconvenience of weakening any of the settlements by calling men to serve on a jury,[14] Greene by proclamation on the twenty-second of May dis-

[9] 4 Md. Arch., Prov. Ct., 402, 430, 431, 450.
[10] 4 Md. Arch., Prov. Ct., 434, 438.
[11] 4 Md. Arch., Prov. Ct., 434, 436 (Greene paid 1000 pounds of tobacco, or one half of what the court gave judgment for, on the charge of carrying the men away, and Mrs. Brent gave him a receipt in full satisfaction), 437, 438.
[12] Baldwin Calendar. Will of Francis Cox is entered on January 26, 1647–1648. 4 Md. Arch., Prov. Ct., 369, 385–387. On p. 400, account of Thos. Weston's administrator was filed in July, 1648, and the will had been filed March 6, 1646–1647. When Governor Stone came, we find he asked accounting; op cit., 466.
[13] Baldwin's Calendar.
[14] 3 Md. Arch., Coun., 195.

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pensed with the June court, postponing all cases until October.

Greene on Kent Island.

In the middle of June Greene went to Kent Island and held court there,[1] with Thomas Matthews as clerk. Cummins was in frequent trouble during this term of court. He and Thomas Bradnox proved that they had not damaged Francis Brooke[2] by driving his cattle "out of his own ground;" but Cummins was ordered to pay a debt[3] for which Brooke sued him and was not allowed to give his oath in "wager of law," as Captain Robert Vaughan, the commander of Kent, testified that Cummins had "formerly taken a rash oath in the court before him" concerning an account.[4] Other suits concerned the killing of a young steer by Thomas Bradnox and of a "fair sow" by Edward Hudson, both animals being the property of Captain Brent.[5] In one of these cases John Goneere committed perjury, and was adjudged to be "nailed by both ears to the pillory with three nails in each ear and the nails to be slit out and afterwards to be whipped with 20 good lashes. And this to be executed, immediately, before any other business of court be proceeded upon."[6] On the next day Henry Morgan, the sheriff, complained[7] that Thomas Munday presented a gun against him and struck him, when Morgan went to arrest him. The court ordered Munday "to be tied to a post and with a good pohicory wand to have 40 good stripes

[1] 4 Md. Arch., Prov. Ct., 390. Greene stayed on the Island into July and held court at Vaughan's, Cummin's and Henry Morgan's houses.

[2] 4 Md. Arch., Prov. Ct., 390, 393. Cummins is also sued for slanderously calling Roger Baxter a perjured rogue (p. 392). John Dandy claimed but failed to prove that Cummins had taken some of his goods in the time of the troubles of the Province; pp. 396, 397, 450.

[3] Cummins appealed to the Provincial court in December and filed depositions that he had paid the bill. 4 Md. Arch., Prov. Ct., 448, 452.

[4] In a second suit in November, 1648, Cummins was again forbidden to "make oath." 4 Md. Arch., Prov. Ct., 440, 451.

[5] 4 Md. Arch., Prov. Ct., 391, 396–398, 413, 433.

[6] 4 Md. Arch., Prov. Ct., 393.

[7] 4 Md. Arch., Prov. Ct., 395.

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about the shoulders." An attachment on the goods of a non-resident was filed.[8] Suits were brought for service and wages[9] and for unlawfully detaining a canoe; gifts and bequests of cattle were recorded,[10] and steps were taken to prevent the stealing of Indians out of Maryland for sale in Virginia.[11] Brent recovered[12] from Vaughan a cow, which had been part of Claiborne's herd and which Brent had taken from Cox in 1644. Cox had taken it back in Ingle's time, and Vaughan now claimed it by "order of justice that then was upon the island," but the Governor held "those that were then present upon the Island and that did hold courts and exercise acts of judicature to be rebels and their judgment to be utterly illegal," so that Brent should have the heifer again.

Events After Greene's Return to St. Mary's.

On Greene's return to St. Mary's a writ of *ne exeat regno* was issued,[1] a suit of detinue was brought for a gun, and security was demanded to save John Dandy from claims for transporting a man from Virginia to Maryland. Early in August, 1648, the body of Thomas Allen[2] was found dead upon the sands by Point Lookout in St. Michael's Manor. He had been shot under his right shoulder, and his skull was broken and scalped. Allen had dreaded two Irishmen at Piney Neck and had asked that, in the event of his death, they be questioned as suspicious persons. He left a will,[3] made in April, which is deeply religious in feeling,

[8] 4 Md. Arch., Prov. Ct., 397.
[9] 4 Md. Arch., Prov. Ct., 396, 397.
[10] 4 Md. Arch., Prov. Ct., 397, 398.
[11] 4 Md. Arch., Prov. Ct., 392, 399.
[12] 4 Md. Arch., Prov. Ct., 394. Vaughan also claimed that Leonard Calvert gave him the cow. On June 30 Brent gave two cows to Cox's two children; p. 401.
[1] 4 Md. Arch., Prov. Ct., 400. On August 25 Copley complained that Hallowes had occasioned his servant to absent himself (p. 406).
[2] Baldwin Calendar; 4 Md. Arch., Prov. Ct., 403.
[3] 4 Md. Arch., Prov. Ct., 423. The inventory amounted to 5393 pounds tobacco. No judge of testamentary causes yet in Maryland. Thomas Payne's will was brought into court on April 8, 1648 (pp. 406, 408). Inventory of Nicholas Harvey's estate is brought into court in September; p. 410. Baldwin's Calendar. 4 Md. Arch., Prov. Ct., 404.

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and in it he bequeaths all his property to his three sons equally. His sons were all minors, and he directs that they do not live with any Papist, nor shall the younger boys be sold for "slaves or mortar boys." Guardians are named and friends are suggested with whom each of the lads may be placed, as they "would use him well and not set him to the mortar." Apparently his murderer was never found. Allen's sons fell into the Indians' hands, and the General Assembly showed itself niggardly in regard to their release,[4] but Lieutenant Richard Banks on September 15, 1650, agreed to redeem one of the sons "without any consideration of servitude or any other consideration whatsoever but his free love and affection."[5] William Marshall, in the same year, agreed to redeem the younger boy, "the child to be at liberty to live with him" or any other whom he "shall best like of without any tie or restraint of servitude."[6]

There were other signs that Indians were troublesome, and five Patuxent Indians were arrested and tried by jury in September[7] for stealing hogs and other "goods." The proof was slight and the Indians were acquitted. In the same month George Manners[8] complained against Edward Hall for letting his hogs into Manners's corn field, so that they spoiled his corn, pease, and pumpkin vines. A number of suits[9] bring echoes of the late rebellion, and show how much confusion it made in the Province. Mrs. Brent sued[10] one Knight for his acts upon Kent Island and, in December, recovered a judgment against him. Thomas Bushrode sued[11] Brent in October as security for a debt owed by

[4] 1 Md. Arch., Ass., 297.
[5] 10 Md. Arch., Prov. Ct., 31.
[6] 10 Md. Arch., Prov. Ct., 51, 68.
[7] 4 Md. Arch., Prov. Ct., 406, 408, 409.
[8] At the same time William Styles sued Manners for unjustly detaining from him his indenture of service, though he had fully satisfied it. 4 Md. Arch., Prov. Ct., 411, 412.
[9] A suit for a bull. 4 Md. Arch., Prov. Ct., 422, 427, 429, 435, 436, 445, 462.
[10] 4 Md. Arch., Prov. Ct., 417, 454.
[11] 4 Md. Arch., Prov. Ct., 413, 418, 453. Gerard testified that 20 per cent. should be allowed for transport of tobacco.

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Lewger for the penalty due by bond. Brent answered that he was being carried unjustly into England as a prisoner on the day when the debt was due, and so could not make tender of the amount in Maryland. Bushrode did not demand the debt in Maryland from Lewger, though he lived in the Province over a year, and, contrary to right, had Brent arrested in Virginia and put to expense. Young John Lewger also stated that the bill was dischargeable by placing bills in Nathaniel Pope's hands, which had been done by his father. The jury held that the forfeiture was void and, deducting what Brent had paid in Virginia, gave judgment for the remainder in December.[12]

Mrs. Brent in October, on behalf of the Proprietary, asked that "stoppage be made of a cow and her increase now in possession of Thomas Copley and claimed by William Hardich [Hardwick] and intended to be transported out of the Province by him, as his Lordship has an interest in all uncertain titles." Hardwick had sued[13] Captain Price for the value of sack furnished Leonard Calvert's troops in 1646, and the jury brought in a verdict for the defendant. On the next day[14] Hardwick asked the court to traverse the jury, as they were not unanimous, and on examination it transpired that William Styles, a juryman, did not agree with the rest and said "No," in a low voice, when the Governor asked if they were agreed. Few heard him and he did not "move any further tarryance." The court held that Styles[15] acted through ignorance and not malice, and thereafter should be disabled to be of a jury; when his turn came he must hire another, nominated by the sheriff, in his room. The court held that it would not grant Hardwick's petition for a new trial at present, but

[12] Brent, on October 5, 1648, sued Edmund Lemin for having slandered him at Cummins's house on Kent Island. 4 Md. Arch., Prov. Ct., 419.

[13] 4 Md. Arch., Prov. Ct., 420.

[14] 4 Md. Arch., Prov. Ct., 414, 420. An assignment of land for a servant is recorded; op. cit., 424.

[15] Ralph Beane sues out a writ *ne exeat regno* against Styles in October. 4 Md. Arch., Prov. Ct., 427.

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would further consider the matter. Hardwick then sued Styles for "unnecessary damage and charge."

The ownership of cattle often came into question; two men claimed a bull,[16] two others a cow,[17] Brent sued Hardwick and Rawlins for taking one of his cows and was given her until they proved her theirs, the burden of making proof being put on them "because they have been heretofore manifestly convicted of taking and possessing cattle of the aforesaid Giles Brent and others injuriously." They did not prove her theirs for a time, and Brent kept the heifer until they did so.[18]

Robert Clark brought[19] suit, at this time, against Walter Smith, with whom he was "mated in a crop of corn," which crop Smith was gathering and carrying away. Clark asked that Smith be ordered not to gather any corn but "what shall be for his own present necessary subsistence" until the division of the whole.[20] Smith and Clark soon brought countersuits, each claiming that the other did not fulfill his part of the contract.[21] Commissioners were appointed to measure and divide the corn.[22] A number of miscellaneous entries are found in October. Copley, with Mrs. Brent's consent, was authorized to receive the rents of certain property in the manor of East St. Mary's, and to hold them till the decision of the question as to whether the land belonged to Copley or to the Proprietary;[23] a deposition was made concerning an Indian's killing a hog, an assignment of "all my salary for keeping my ordinary" was made by Francis Van Enden.[24] At the November court a number of the jury were fined for non-appearance. Suits

[16] 4 Md. Arch., Prov. Ct., 422, 427.
[17] 4 Md. Arch., Prov. Ct., 423.
[18] 4 Md. Arch., Prov. Ct., 424, 425, 428, 432, 449, 450, 485, 487, 488, 540. Similar course was taken in a suit Mrs. Brent brought for a cow she alleged to be Mrs. Eure's. 10 Md. Arch., Prov. Ct., 4, 71.
[19] 4 Md. Arch., Prov. Ct., 425.
[20] 4 Md. Arcn., Prov. Ct., 443.
[21] 4 Md. Arch., Prov. Ct., 444, 445; Smith also asked for his writings in Clark's possession, 451, 453, 474, 498.
[22] 4 Md. Arch., Prov. Ct., 426.
[23] 4 Md. Arch., Prov. Ct., 426.
[24] 4 Md. Arch., Prov. Ct., 429.

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for debt and for failure to deliver goods, or to return the price when the article bought was not delivered, occupied much of the court's attention.[25] Cattle and the troubles of the rebellion were still discussed.

Greene's Troubles with Vaughan and Events in the Winter of 1648 and 1649.

Greene sued Vaughan, commander of the Isle of Kent, for "divers, reviling, scoffing speeches against the person" and authority of the Governor.[1] Among the "unworthy expressions" which Vaughan had used were the words, "the Greene Governor," uttered in a "scornful, base, manner" and tending to arouse the people to rebellion and to the lessening of the authority of that government "from which his own is derived, rather than to the upholding of it, according to his oath." Vaughan was also alleged to have uttered such "rash, upbraiding speeches" concerning the judicial decisions Greene made when he was last upon the island as, "There is no right to be had in the Province in matter of justice." Apparently the decision by which Brent was given certain cattle out of Cox's estate[2] was the one which chiefly disturbed Vaughan. Francis Brooke and Lieutenant William Evans deposed that Vaughan had said to them, in a "most reviling and base manner," that Brent "must needs recover them, for whatsoever Capt. Brent claimeth as his, our Greene Governor presently adjudgeth to him, without further proving. There is neither right nor justice to be had here and, therefore, I am going to Virginia, where I make no doubt but to recover those cattle again." On December 9, however, before the trial of the case,[3] Vaughan petitioned to have the action withdrawn, humbly confessing his falsely reviling the Governor, and asking pardon, which requests were at once granted.

[25] 4 Md. Arch., Prov. Ct., 430, 433.
[1] 4 Md. Arch., Prov. Ct., 439.
[2] 4 Md. Arch., Prov. Ct., 440, 449.
[3] 4 Md. Arch., Prov. Ct., 459.

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Because of these difficulties Greene had removed[4] Vaughan as commander of Kent, giving Henry Morgan, the high sheriff of the county, his military powers, and Philip Connor the power to issue writs. All further power of judicature was suspended for the present, and cases between Kentishmen must be determined at St. Mary's. On December 2 Greene revoked[5] this order, reappointed Vaughan commander, and gave him Philip Connor and Nicholas Browne as commissioners. If this date is correct, Vaughan's submission[6] had also been made by that time. It is stated that he was involved in a dispute with the commissioners of the county court at this time and asked their forgiveness also.

Among the court business of November already noted we find a warrant for the seizure of the person and property of John Gresham of Kent Island,[7] a rebel who had not taken advantage of the acts of amnesty, and a number of suits[8] against John Hallowes brought by John Walton's creditors[9] for transporting Walton out of the Province. Bargains and sales of swine and cows and trespass in killing dogs were also the subjects of suits.[10]

The first December case throws an interesting light upon customs of the time, being a complaint that Captain Edward Hill had failed to fulfill a contract to deliver two Indian boys whom a man had bought from him.[11] For perjury, on December 4, Blanche Howell[12] was compelled to "stand nailed in the pillory and to lose both her ears." The record grimly continues, "This to be executed before any other

[4] 3 Md. Arch., Coun., 197.
[5] 3 Md. Arch., Coun., 198.
[6] Davis's Day-Star, 191, from Fragment of Kent County Records. For a sketch of Vaughan, see Davis. He was removed from office in 1653 by Bennett, after Stone had in 1652 deprived him of the extensive power to grant land warrants conferred on him in 1648. He left a son, William, and a daughter, Mary, who married Major James Ringgold.
[7] 4 Md. Arch., Prov. Ct., 441.
[8] 4 Md. Arch., Prov. Ct., 442, 443, 446, 453, 472, 474.
[9] 4 Md. Arch., Prov. Ct., 441, 451.
[10] 4 Md. Arch., Prov. Ct., 443, 444.
[11] 4 Md. Arch., Prov. Ct., 444.
[12] Formerly Oliver; 4 Md. Arch., Prov. Ct., 445.

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business in court be proceeded upon . . . and was executed." The estate of Thomas Allen came into court in two cases of some importance, in one of which the man "who is accounted and esteemed as administrator" was directed to allow a servant, whose term had expired, the equipment in accordance with the custom of the country;[13] in the other he was directed to pay a debt to the attorney of a mariner,[14] since the debt was with valuable consideration, though the bill was not made, in words, "payable to any attorney or assignee." Walter Gwest demanded[15] tobacco from Anthony Rawlins for "undertaking and affecting business for him," and Rawlins replied that he had given him an axe for his services "in being my attorney against Mr. Fenwick." This is one of the first suits for a lawyer's fee. The grand jury was summoned to hear an accusation of felony[16] against Thomas Bradnox of Kent, who, forgetting that he had been pardoned his rebellion, some time during the past summer had killed and eaten at his house a two-year-old steer, doubtless from Baltimore's herd.[17] Only one witness testified,[18] however, and there was some question as to his understanding of an oath. Even in his testimony there was little to fix the killing of the beast upon Bradnox, so the latter was acquitted.[19] Mrs. Bradnox asked out[20] of the estate of William Cox a "cow calf, whereby his hand was occasioned to be hurt," which calf he gave to her "for her pains in endeavoring the cure of his hand;" and she asked from the estate of Mrs. Cox a

[13] 4 Md. Arch., Prov. Ct., 447, 456, 470. The custom of the country allowed the servant to receive at the expiration of his term a "cap or hat, one new cloth or frieze suit, one shirt, one pair shoes and stockings, one axe, one broad and one narrow hoe and three barrels of corn."

[14] 4 Md. Arch., Prov. Ct., 445.

[15] 4 Md. Arch., Prov. Ct., 446, 465.

[16] 4 Md. Arch., Prov. Ct., 444.

[17] 4 Md. Arch., Prov. Ct., 437. Brent had warranted two old female cattle to Bradnox in June.

[18] 4 Md. Arch., Prov. Ct., 444, 445, 447. Wm. Tompson also warranted a cow to Walter Wallerton in December, 1648.

[19] 4 Md. Arch., Prov. Ct., 448.

[20] 4 Md. Arch., Prov. Ct., 446.

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yearling heifer, which she gave Mrs. Bradnox for "curing her child's mouth and tending her in her last illness."[21] Vaughan had Cox's estate and was summoned to appear in January,[22] but, as he could not come then, the case was respited until March. Vaughan, in return, brought suit against Bradnox for his conduct during the rebellion.[23] At this December court of 1648 Mrs. Brent induced[24] the court to rule that the forfeitures of tenements belonging to rebels within Leonard Calvert's manors should fall to him, by virtue of English law and the Conditions of Plantation. Our litigious acquaintance, Cummins, brought suit for a gun and for divers debts,[25] Van Enden sued for his tavern bills,[26] Nicholas Gwyther had the estate of a man attached to repay him a sum he had been forced to pay as surety,[27] payment of various debts was demanded,[28] the account of the administrator of Robert Tuttey was filed,[29] and ear-marks for cattle were recorded.[30] Two men, who were the greatest creditors of the estate of William Smithfield, who was drowned upon the ice in Bretton's Bay, were appointed to receive and collect his estate, and gave bond therefor.[31] At the very end of the year Greene had recorded[32] the indenture between him and a woman servant.[33]

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[21] 4 Md. Arch., Prov Ct., 471.

[22] 4 Md. Arch., Prov. Ct., 478. Baldwin's Calendar names additional estates (Thomas Hebden, William Thomson, Thomas Arnold and Henry Hooper), which came before the court from 1648 to 1649.

[23] 4 Md. Arch., Prov. Ct., 460.

[24] 4 Md. Arch., Prov. Ct., 457, 460, where there is an inquiry about killing cattle and hogs of John Abbott's estate which had escheated to the Proprietary. 2 Bozman, 345, doubts the legality of this extra-judicial opinion, and points out that in England such forfeitures went to the King and to the Lord of the Manor.

[25] 4 Md. Arch., Prov. Ct., 459.

[26] 4 Md. Arch., Prov. Ct., 467.

[27] 4 Md. Arch., Prov. Ct., 459.

[28] 4 Md. Arch., Prov. Ct., 457.

[29] 4 Md. Arch., Prov. Ct., 461. There was as yet no one in the Province with power to grant letters of administration.

[30] 4 Md. Arch., Prov. Ct., 462.

[31] 4 Md. Arch., Prov. Ct., 463. Inventory on p. 466.

[32] 4 Md. Arch., Prov. Ct., 464. On February 8, 1648–1649 (p. 469), Manners testified that he had bought a maid-servant from Abraham Johnson of Kent Island for the use of Captain Stone, and that Gov-

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At the January court there was not much business beyond a few questions concerning service,[34] and on January 8 Greene adjourned the court until February 5.[35] A suit was instituted in January to recover money won in playing ninepins, and in June the court finally decided to give the plaintiff no relief.[36] Deeds of lands and of cows and powers of attorney are recorded in the midst of suits for private debts, in February and March.[37] Though Copley was out of the Province,[38] the protection given to him by the King as a recusant in 1635 is recorded.[39] Father Fisher, with Father Lawrence Starkey, came from Europe to Virginia during this winter and reached the latter country on January 7, after a tolerable journey of seven weeks. Father Starkey staid there, but Fisher arrived in Maryland in February,[40] so that the Jesuit mission at St. Inigoes was reëstablished. Father Fisher writes to his superior shortly after his return to the Province that the Indians summon him to their aid and have not been ill treated since he was torn from them. He has been for a fortnight with his flock but cannot do all that is needed. "Truly flowers appear in our land: may they attain to fruit. A road by land through the forest, has just been opened from Maryland to Virginia; this will make it but a 2 days' journey and both countries can now be united in one mission." "By the singular Providence of God, I found my flock collected together after they had been scattered for 3 long years;

ernor Greene now had the maid. He also demanded a year's service from Edward Hudson of Kent.

[33] In March a most curious partnership agreement is recorded, by which (4 Md. Arch., Prov. Ct., 479) Walter Peaks and John Slingsby agreed for five years to have all their property together and then to divide it equally. In the mean time each child is to have a cow calf, and Mrs. Peaks is to have her wearing clothes and her child's and one bed furnished her.

[34] 4 Md. Arch., Prov. Ct., 456, 465, 472.

[35] 4 Md. Arch., Prov. Ct., 466.

[36] 4 Md. Arch., Prov. Ct., 465, 470, 491.

[37] Mrs. Brent is granted respite until the next court in a suit, because she was not lawfully summoned three days before the court according to the court's custom. 4 Md. Arch., Prov. Ct., 481.

[38] 4 Md. Arch., Prov. Ct., 473.

[39] 4 Md. Arch., Prov. Ct., 479.

[40] Neill, Founders, 104. 3 U. S. Cath. Mag., 36.

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and they were really in more flourishing circumstances than those who had opposed and plundered them; with what joy they received me and with what delight I met them, it would be impossible to describe, but they received me as an angel of God."[41]

William Stone's Commission as Governor.

At Bath, where Lord Baltimore was residing, he issued a commission to William Stone as Governor,[1] on August 6, 1648. The commission was not used by Stone until March and may not have been received in Maryland until then. With it came a commission to Greene, Captain John Price,

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[41] B. U. Campbell, Historical Sketch of the Early Christian Missions among the Indians of Maryland, I Western Cont., 13 (March 28, 1846). 12 Am. Hist. Rev., 584, contains early Jesuit documents.

[1] 4 Md. Arch., Prov. Ct., 515. William Stone (3 Va. Mag., 272) was born in England in 1603, came to Virginia before he was thirty years of age, and was forty-five when made Governor of Maryland. In 1635 he was a vestryman in Accomac County and in 1646 was sheriff of Northampton County, with Thomas Hatton, afterwards secretary of the Province of Maryland, as his under-sheriff. Job Chandler, who afterwards served in the Maryland Council, then lived in Northampton County, and Captain Wm. Hawley, Jerome's brother, had resided there two years before (Neill, Va. Carolorum, 413, 416; 18 Md. Hist. Soc. Fund Pubs., 179). Wm. Stone, a nephew of Thomas Stone, haberdasher of London, came from Northampton County, Va., and brought in (Neill, Terra Mariae, 118; N. E. H. G. Reg., July, 1895) six persons with him. It has been suggested that the Puritan settlers from Nansemond may have been the five hundred he promised to bring in. Davis, on rather slight evidence, thinks he came from Northamptonshire, England. He was a brother-in-law of the Rev. Francis Doughty, a nonconformist clergyman who lived in New York and later probably in Maryland with his daughter Mary, the wife of Hugh O'Neal of Patuxent. Stone's family tradition states that he was granted as much land as he could ride around in a day, and thus acquired his manor, Avon, on the Nanjemoy River in Charles County. He is said to have been twice married and once to a Roman Catholic. He died about 1660, according to another account about 1695. Among his descendants have been: Thomas Stone, a signer of the Declaration of Independence; John Hawkins Stone, Governor of Maryland in 1794; Michael Jenifer Stone, a member of the Convention of Maryland which ratified the Federal Constitution; the Rt. Rev. Wm. Murray Stone, Protestant Episcopal Bishop of Maryland; and Hon. Frederick Stone, Judge of the Maryland Court of Appeals. (See also Davis's Day-Star, 175.)

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Thomas Hatton[2] (who was to be the secretary), John Pile,[3] and Robert Vaughan to be the Council,[4] Greene being the only one who had served before. Lewger seems to have returned to England; Brent, Gerard, and Neale were omitted for some cause. The form of an oath[5] was sent over which must be taken by each one before he could exercise any of the functions of the office. Stone, or his deputy, must always be at Council[6] meetings, and he was given the casting vote in case of a tie, and the right to nominate a successor and to add two or three "able and faithful" persons to the Council during the next twelve months. As Ingle had carried off the great seal, Baltimore formally protested against any document sealed therewith[7] since it fell into Ingle's hands, and sent over a new seal to be kept by Stone.

John Price had shown "great fidelity" in the rebellion and had a knowledge of military affairs, so he was made muster master general to train the settlers in arms.[8] Vaughan was recommissioned as commander of Kent because of his faithfulness in Ingle's time, and was authorized to select any six Kentishmen for his council.[9] Hatton was

[2] Thomas Hatton (see Davis's Day-Star, 200), came in 1648 with his wife, two sons, John and Robert, and three white servants, and brought over his deceased brother Richard's family in the following year. He was killed in 1655 in the Battle of the Severn.

[3] Davis's Day-Star, 186, says he was probably a native of Wiltshire.

[4] 3 Md. Arch., Coun., 211. 2 Bozman, 337, calls our attention to the fact that here for the first time the Governor is not named as of the Council, except to advise with them.

[5] 3 Md. Arch., Coun., 213. 2 Bozman, 337, notes that the oath contains the clause ensuring religious liberty. Most of the commissions were dated on August 12.

[6] 3 Md. Arch., Coun., 208. See Evolution of a Colonial Governor in 89 Macmillan's Magazine, 44.

[7] Alice Thornton's Autobiography. In the Surtees Society Pubs., vol. 62, p. 348, is a curious story that on the day before the execution of Charles I she saw Baltimore with other Papists and fanatics who tried to get the King to acknowledge he was at fault, in which event they promised to save his life.

[8] 3 Md. Arch., Coun., 215. He was to have as ample fees as were allowed in Virginia, which colony often served as Maryland's model. 2 Bozman, 339.

[9] 3 Md. Arch., Coun., 216. The oath he took is given. Previously the commander of Kent had been appointed by the Governor. 2 Bozman, 339.

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made secretary, with care not only of the official papers of the Governor and Council, but also of land grants and of the probate of wills. Robert Clark[10] was appointed surveyor general, succeeding Langford, and was given the same fees as were paid in Virginia.[11] New Conditions of Plantation were also sent,[12] the earlier ones being revoked, and the benefits of the Conditions were extended not only to the British and Irish, but also to settlers of French, Dutch, and Italian birth. No escheated land, nor any one of Baltimore's manors, was permitted to be granted without his especial warrant. The new Conditions of Plantation stated that the oath of fidelity to Baltimore, in the form specified, must be taken before any grant would be delivered to any "adventurer." We shall see that this oath of fidelity was destined to cause grave discontent.[13] There had been no new Conditions for over six years. In the new Conditions of 1648 an attempt was made to make the manors permanent by providing that one sixth of each manor should be called the demesne and never alienated, separated, or leased from the royalties. Provision was also made for the seizure of land by Baltimore if the owner did not keep it peopled. Servants, at the end of three years, were to be accounted planters and held entitled to grants of land. Corporations, societies, fraternities, guilds, and bodies politic were not allowed to hold land in their own name, or that of any other person, without special license first given them, and any other person might be also especially excepted from the right to hold land. Land might not be given or sold by any planter to any corporation, or to any one in trust for such corporation, or for uses forbidden by the statutes of mortmain, without a similar special license.[14]

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[10] Davis's Day-Star, 195. He lost his property in the Puritan troubles and died in 1664. His wife was Jane, widow of Nicholas Causin, and he had children, John, Robert, Thomas and Mary.

[11] 3 Md. Arch., Coun., 219.

[12] 3 Md. Arch., Coun., 221. Dated June 20.

[13] 3 Md. Arch., Coun., 224. Kilty, p. 39.

[14] This would conciliate Lewger, who was not reappointed as secretary (18 Fund Pubs., 114).

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The application for a grant of lands must be made within a year of the time it was earned. "Because all secret trusts are usually intended to deceive the government, or some other persons, and by experience are found to occasion many suits and dissentions, no adventurer" may take a grant in trust for any other, unless the purpose be expressed in the grant. In this manner the Proprietary guarded himself against the Jesuits.

Stone removed to Maryland from Northampton County, Va., and was made Governor chiefly because he had "undertaken, in a short time, to procure 500 people of British or Irish descent to come from other places and plant and reside" in the Province.[15] He was a Protestant, as were all his Council but Greene and Pile. He was given the usual gubernatorial powers, except that he could not appoint Councilors or such other officers as Baltimore appointed, nor could he assent to the repeal of any law, nor to the passage of any law for the establishment or alteration of any office, nor to the imposition of any fine or forfeiture, except for Baltimore's benefit; nor could he act in matters of religion, constitution of parishes, payment of tithes, oaths to be taken by the people, treasons, matter of judicature, or that which might in any way infringe the Proprietary's "rights, prerogatives, or royal jurisdictions and dominion," without a special warrant, under Baltimore's hand and seal, first obtained, published to the General Assembly and kept among its records. All laws passed by the General Assembly should henceforth be perpetual. Stone's pardoning power was also limited by excepting from it Claiborne, Ingle, and John Durford, and any other person whom Baltimore might exempt from pardon.

The oath of office for the Governor[16] included clauses that he would not "molest or discountenance" for his religion

[15] 2 Bozman, 333. 3 Md. Arch., Coun., 202. 13 Va. Mag., 315. Stone was a vestryman of Hungar's church, Northampton County, Va., in 1635.

[16] 3 Md. Arch., Coun., 210. 18 Md. Hist. Soc. Fund Pubs., 114. This oath and the toleration act are to be construed together. These clauses had not been found in previous official oaths.

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any person "professing to believe in Jesus Christ and, in particular no Roman Catholic," if he were neither unfaithful to Baltimore, nor conspiring against the civil government established here; that he would not make a difference of persons, in conferring office or favors, because of religion, but would regard "the advancement of his Lordship's service here and the public unity and good of the Province without partiality;" and that if any other person in the Province, during Stone's term of office, should molest any Christian for his religion, he would apply his power to protect the person so molested and punish the person troubling him.

The Assembly of 1649.

On April 2, 1649, the General Assembly met.[1] Whether it was an adjourned session or a new Assembly we do not know, for the proceedings of all but the last day are lost. Stone presided as his Lordship's Lieutenant Governor, and Hatton, the new secretary, recorded that he received the "Book of Entries" at the beginning of the session. The Assembly probably met in two houses,[2] and Bozman thinks that the new organization of the government may have been inaugurated on the first day of the Assembly. The session lasted until April 21, when the Governor dissolved the House. The assessment of charges of the Assembly shows that Kent County was to pay a sixth part of the charges.[3] The levy for St. Mary's, of which all but Greene approved, was to be made by two freemen from every hundred of the county in October. Bretton, who probably acted as clerk of the Assembly, on April 16 in the House delivered Hatton

[1] 3 Md. Arch., Coun., 229. Davis's Day-Star, pp. 40, ff, discusses this Assembly. The date of meeting was April 13, New Style. He says that Colonel John Price of the Council, a Protestant, and John Mannsell of the Lower House, a Roman Catholic, "were in the habit of making a signet mark," and queries whether they could write.

[2] 2 Bozman, 348. Bacon's laws. Davis's Day-Star, p. 140, gives good reason to believe that the Assembly sat in two houses, and suggests that Fenwick, who received an extra allowance, may have been speaker.

[3] 1 Md. Arch., Ass., 237, 238.

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two more imperfect record books and some loose papers, all the records of the Province.[4] Besides this we know nothing of the proceedings of this, the most famous of Maryland's Provincial Assemblies, save what is to be learned from the laws it passed and from letters,[5] one sent Lord Baltimore and signed by all the Councilors and burgesses present on the last day of the session, and the other written by Baltimore to Stone on August 26, 1649. From these we learn that Hatton carried with him to Maryland a body of sixteen laws, to which Baltimore had affixed his great seal and which he wished proposed to the Assembly for their consent.[6] He also, by the commission to the Governor and Council, signed and sealed by him on August 12, 1648, declared his assent[7] to these laws, which "are so just and reasonable" that Stone, by letter dated February 20, 1649, declared they ought "upon due consideration" to be "well liked of by well affected men." If the sixteen laws should all be passed, then Baltimore "declared his disassent" unto all laws heretofore passed, except the attainder of Claiborne.[8] The Assembly's letter recited the miseries and calamities of the Province, especially under Ingle's "plundering time," referred to the services of Baltimore's friends, and defended Mrs. Brent, whom the Proprietary had blamed for meddling with his estate. She "deserved favor and thanks rather than bitter invective." The members next expressed surprise that Baltimore censured them for protesting against the laws of Leonard Calvert's last Assembly, and defended that protest. They also expressed surprise that objection was made to their taking a few cows from the Proprietary's stock and distributing them, in accord with Leonard Calvert's promise, among those men "who had ventured and hazarded their fortunes, lives, and estates in the defence, recovery, and preservation" of the Prov-

[4] 3 Md. Arch., Coun., 230.
[5] 1 Md. Arch., Ass., 238, 262.
[6] 3 Md. Arch., Coun., 220.
[7] The assent was only in case the laws were enacted within twelve months. 3 Md. Arch., Coun., 221.
[8] 3 Md. Arch., Coun., 221.

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ince.[9] They objected to the new and "strait conditions of Plantation," making the place "desolate of spiritual comfort," and to the heavy exactions the Proprietary wished to make upon them, who had already paid sixty thousand pounds of tobacco for the recovery and defense of Maryland, a sum more than all the recovered estates would have brought at auction. They were loyal to the Proprietary and believed that the misunderstandings arose largely because of their distance from him. The people were at present too illiterate and void of understanding and comprehension to give a mature and wise discussion of the laws Baltimore sent over, and, after reading them over and debating them, they found them "long and tedious," containing clauses that, in prudence, they could not as yet with safety adopt for perpetual laws. They needed much more time for debate upon them and the crop was pressing. Baltimore had directed that none of these laws should be "recorded by us and enacted by the Lieutenant General" unless the whole body were received without alteration, but some parts should be altered. Therefore the Assembly had not meddled with his body of laws at all, but had reflected on such things as might give Baltimore most satisfaction and comply with his purposes,[10] which they understood to be four, viz., (1) "That the country may be preserved with

[9] 2 Bozman, 360. The Assembly wrote, asking how Baltimore could suppose it "fit and necessary that those your loyal friends should be deprived by law of their dues for so great a service done and effected by them," and how he could ask that they should be required to pay "themselves a levy upon themselves," meaning probably, that on these soldiers, now become citizens, would fall part of the tax. Baltimore, in his reply of August 20, 1649, states that a general assessment is the only just way of paying public dues, and that soldiers must expect to pay their part thereof. 1 Md. Arch., Ass., 270.

[10] 18 Fund Pubs., 117, calls attention to the facts that of the twelve acts passed by the Assembly he vetoed three, and that two of the nine he approved were acts relating to the marking of hogs and planting of corn, which Baltimore clearly did not send over, so that the remaining seven must have been among the sixteen laws, viz: concerning religion, against counterfeiting the great seal, against sedition, against purchasing lands from the Indians, against fugitives, against kidnapping Indians, and against laying a tax on tobacco exported.

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peace and defended and governed with justice;" (2) "that some competent support may be raised" to Baltimore; (3) that a "stock of cattle may be raised again" for the Proprietary; and (4) that all should be satisfied who had concurred to the regaining and conserving of our country. To accomplish these ends, they first chose from Baltimore's laws those which seemed "most conducing to confirm a long desired and settled peace among us," and they then added such others of their own as they considered "most necessary and best suitable" to present conditions.[11]

They had passed a law for the support of the Proprietary which granted him for seven years a custom of ten shillings on every hogshead of tobacco laden on any Dutch vessel to be exported to any port not his Majesty's,[12] provided that half this revenue were paid toward satisfying just claims touching the late recovery of Maryland. This shows how the Dutch were absorbing the carrying trade, which absorption led to the navigation act of 1651. In the next two years there should be raised for Baltimore a bull and sixteen cows, in consideration of his former stock of cattle having been distributed and disposed of toward the defense of the Province.[13] This grant was conditioned upon the Proprietary's ratifying, within the two years, the disposition already made of his estate toward the satisfaction of the soldiers and of other charges for the recovery of Maryland. This refers of course to the carrying out of the promises alleged to have been made by Leonard Calvert. Little of Baltimore's personal estate had been lost since the Rebellion. The safety of the Province then hung "upon so ticklish a pin" that, unless such disposition had been made, "the

[11] 1 Md. Arch., Ass., 241, 252. 2 Bozman, 362.

[12] This act is proof that no news of the death of Charles I had reached the Province.

[13] They claim that this is one third more than the stock numbered before; 1 Md. Arch., Ass., 242. In order to prevent trouble concerning the cattle distributed to the soldiers, the Assembly enacted that no cattle which belonged to Baltimore's estate at Calvert's death should be transported out of the counties, or have their owners changed, until the Proprietary's pleasure were known. 1 Md. Arch., Ass., 253.

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absolute ruin and subversion of the whole Province, inevitably, would have followed."

On April 29, 1650, Stone, Greene, Captain John Price, John Pile, Hatton, Vaughan, Robert Clark, Fenwick,[14] Bretton,[15] and George Manners[16] signed a statement which was confirmed by the Assembly that they, as members of the Assembly of 1649, meant by the words, "touching the late recovery and defense of the Province," that the act should satisfy only the claims of "the soldiers who came up in person with Governor Calvert, deceased, out of Virginia and those other, who were hired into the fort of St. Inigoes', for the defence and preservation of the Province and other just arrears incurred during that time in the said fort."[17] This list of signers is the only list of names of members of this Assembly known to me. The committee on the levy has the additional names of Richard Banks,[18]

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[14] A sketch of Fenwick's life is given in Davis's Day-Star, 207. He died about the year 1655, his will being dated March 6, 1654–1655. In it he gives legacies to Fathers Starkey and Fitzherbert. He married twice. By his first wife, whose name is unknown, he had Thomas, who died young, Cuthbert, Ignatius, and Teresa. In 1649 he married Jane, widow of Robert Moryson of Kecoughtan, *i. e.*, Hampton, Va., the sister of William Eltonhead. She died in 1660, leaving issue Robert, Richard, and John. Davis gives extensive extracts from her will, showing that she had negro and Indian servants. One negro slave was to be free as long as he paid a hogshead yearly to the church and continued a member of it. If he left the communion he should become the church's slave forever. The family has always been numerous and prominent in Maryland. Among its members have been: Ignatius Fenwick, who sat in the Provincial Convention of 1776, Athanasius and James, who sat in the Senate of Maryland, Enoch, President of Georgetown College, Edward, Roman Catholic Bishop of Cincinnati, and Benedict, Roman Catholic Bishop of Boston. Many have been priests.

[15] William Bretton (Davis, Day-Star, 224) came to Maryland with his wife Mary, daughter of Thomas Nabbs, about 1637. He founded a Roman Catholic Chapel in 1662 which was maintained by devout men of Newtown and St. Clement's hundreds. About 1651 he married Mrs. Temperance Jay, and had a son and a daughter.

[16] George Manners (Davis, Day-Star, 231), died in 1651, leaving sons, William and Edward, and daughter, Barbara, and giving a red cow calf to the church.

[17] 1 Md. Arch., Ass., 299.

[18] Captain Richard Banks came in 1646 and married Margaret Hatton, the widow of the secretary's brother (Davis, Day-Star, 233).

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Philip Connor,[19] Richard Brown,[20] Walter Pakes or Peake.[21] Mr. Thomas Thornborough[22] and John Mannsell[23] were paid for twenty-one days' attendance. Davis[24] assumes that we have, in these sixteen names, all of the members of the Assembly, and that seven were of the Council, viz., Stone, Greene, Price, Pile, Clark, Hatton and Vaughan, the last named being the only one from Kent. Philip Connor was the only Kentish burgess. Davis states that Greene, Pile and Clarke, of the Council, and Fenwick, Bretton, Manners, Mannsell, Peake and probably Thornborough of the burgesses were Roman Catholics, but the question as to the religion of the members loses its importance when we remember that the famous toleration act which they passed took its initiative from the Proprietary's act.

The Assembly asked that Baltimore's requests be made "with as little swearing as conveniently may be," for "an occasion is given to much perjury, when swearing becometh common." "Oaths little prevail on men of little conscience." Further they insisted that all accusations of disloyalty against William Thomson,[25] "your Lordship's old servant," were false, and they asked that Baltimore send "no more such Bodies of laws, which serve to little or no other end than to fill our heads with suspicious jealousies and dislikes

[19] Philip Connor (Davis's Day-Star, 220) came to Maryland about 1645, was not removed from his commissionership when the Puritan commissioners visited Kent Island, and later became commander of the county. He died about 1660, leaving a large estate. He had a son, Philip.

[20] Davis's Day-Star, 229, cannot identify Richard Brown.

[21] Walter Peaks came about 1646, resided in Newtown hundred, married Frances ———, and left children, Peter, Mary, and Margaret. He was born in 1609, and was hanged in 1668 for the murder of William Price while he was drunk. 1 Md. Arch., Ass., 237.

[22] Thomas Thornborough (Davis's Day-Star, 242) appeared in the Province in 1642.

[23] John Mannsell came to Maryland as early as 1637 (Davis's Day-Star, 237), and was one of the smaller planters. He died intestate about 1660, leaving a son John.

[24] Day-Star, 134.

[25] He was a Roman Catholic. 1 Md. Arch., Ass., 243. Neill, Terra Mariae, 78, thinks that this was the Puritan clergyman, later of Braintree, Mass., who is described in Mather's Magnalia, but Baldwin's Calendar shows that he died in the next January in Md.

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of that which verily we understand not." "Rather we shall desire your Lordship to some short heads of what is desired." If such are sent, they will give him "all just satisfaction." The Assembly's letter has well been styled[26] "for the most part respectful, wise, temperate, and just." Baltimore's conduct in replying seems to have been short-sighted and tactless, as was much of the English dealing with the colonies. In his answer, dated August 26, 1649,[27] he charged the failure to adopt his sixteen acts to "subtile suggestions" of some who should have assisted in promoting a good correspondence, rather than have raised "jealousies, or discontents between us and the people." He stated that he was informed that the chief exceptions against the laws were the words, "Absolute Lord and Proprietary," the title given by the charter. The words, "royal jurisdiction," were "stumbled at" in the act for recognition of the charter and in the oath of fidelity. It was a bad time to force such words on the men of Maryland, when the mother country was Commonwealth, not Kingdom.

In the same answer Baltimore stated that Leonard Calvert had no right to dispose of his brother's personal estate without the consent of Lewger, which consent was never given, and that Calvert's acts were done with the expectation of making up again out of the customs what was disbursed out of the Proprietary's estate, and so the law of 1646–7 was passed. But after Calvert's death, not only a "pretence of an illegal engagement of his" was used to despoil Baltimore, but also the payment of the three customs was rejected by the Assembly.[28] One feels that the Proprietary has some right to complain, but his way of doing so is not such as would win an opponent.

Twelve acts were passed at this session, and all of them, save two marked expired, were confirmed by Baltimore's declaration[29] through Philip Calvert in August, 1650. The

[26] 2 Bozman, 367.
[27] 1 Md. Arch., Ass., 262–272. 2 Bozman, 366.
[28] 1 Md. Arch., Ass., 268.
[29] 1 Md. Arch., Ass., 244.

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two that expired related to the better securing of the Province against the Indian enemy in 1649, and provided for the smith or armorer. This[30] tradesman should take specialty of creditors, and this being shown at the secretary's office on denial of payment, he should have execution granted at once with judgment. This law was to secure the smith's pay for preparing arms for unexpected occasions. By the other law it was enacted that on the last three days of every month from April to September during 1649 the freemen of each hundred should meet at a place selected by their militia commander, who was appointed by the Governor, and there, in folkmoot, should make such plans as they judged meet for the defense of the hundred during the next month. Every one must make due provision of arms and ammunition and must not stir from his plantation unarmed, even to go to church. The law determined how alarms should be given.

The Assembly reënacted[31] the provision that every taxable person planting tobacco must plant two acres of corn, imposed a penalty on the stealing of hogs, and directed each man to bring in and have recorded his marks of hogs and other animals. All these acts, which we have considered hitherto, had probably their origin in the Assembly.

The acts imposing severe punishment for counterfeiting the Proprietary's great seal,[32] for declaring void any purchases of lands from the Indians without taking out grants from Baltimore, and for the punishment of "seditious speeches and practices[33] without force and rebellious practices with force" against the Proprietary were probably taken from the sixteen laws sent out from England. These speeches, etc., included such as "tended to divert the obedience of the people from the Lord Proprietary," and included also the "publishing, establishing, or advancing of

[30] 1 Md. Arch., Ass., 253, 255. 2 Bozman, 365.
[31] 1 Md. Arch., Ass., 251. 2 Bozman, 359.
[32] 1 Md. Arch., Ass., 247–249. A new great seal had just been sent to Maryland. 2 Bozman, 356. See C. C. Hall's Great Seal of Md., 23 Md. Hist. Soc., Fund Pubs., and his article in 2 Md. Hist. Mag., 47.
[33] 1 Md. Arch., Ass., 249, 250. 2 Bozman, 357.

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any other right or title to the propriety or dominion of this Province" than Lord Baltimore's. We have left for the end three laws whose origin is uncertain. One of these punished fugitives, indentured servants, and fugitive debtors, and such as should help them to escape.[84] The second forbade the kidnapping and sale out of Maryland of any friendly Indian, or the delivering of arms or ammunition to any Indian, without special license from the Governor. The third of these laws and the one which heads the statute book for this session is the famous act "concerning religion."

The Act Concerning Religion.

This famous act, which crystallized into words of law what had been the policy of Baltimore and his officers from the first settlement, was probably sent over in part among the sixteen laws and added to by the Assembly before they enacted[1] it. There was no idea of the separation of church and state, but merely of toleration of all kinds of Christians. The preamble states that "in a well governed and Christian commonwealth, matters concerning religion and the honor of God ought in the first place to be taken into consideration and endeavored to be settled."[2] The act seems to have been made up of two bills welded together, as a second preamble occurs in the middle of the act and the tone of the second part is far more liberal than that of the former one. The second part also contains phrases identical with those found in the Governor's oath[3] sent over to Stone with the sixteen acts. These considerations make it practically certain that the credit for the passage of the act belongs rather to the Proprietary than to any part of the colonists, whose credit is rather that they followed the initiative of the shrewd

[84] 1 Md. Arch., Ass., 249. Andrew Ousamazinah, Fenwick's servant, excepted. 2 Bozman, 358.

[1] Baltimore on August 16, 1649 (1 Md. Arch., Ass., 263), wrote that in one of his sixteen acts there was a provision for "freedom of conscience." C. C. Hall has made the best analysis of the law, which I largely follow. Lords Baltimore, Lecture III.

[2] 1 Md. Arch., Ass., 244. 2 Bozman, 350.

[3] 3 Md. Arch., Coun., 210.

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and tolerant-minded Baltimore. Comparing this act with the conduct of Roman Catholic and Protestant at the time, in Europe, in Canada, in New England, and in Virginia, we gain an idea of how far Baltimore was in advance of his age when he caused religious freedom to be established in the Province. Hall has caught[4] the true meaning of Baltimore's policy and writes: "We see in this the act, not of an apostle of truth or of one who stood as the exponent of a principle hitherto unthought of, but rather that of a man who was governed by a broad spirit of fairness and liberality, by a far-sighted statesmanship and who, as the work of his life and his dealing with his Province amply show, having accepted and adopted a principle far in advance of the spirit of his age, adhered to it unswervingly, enforced it impartially." Charles, third Lord Baltimore, was the eldest son, and as Governor of Maryland during the latter part of Cecilius's life may best have known his father's views. In answering queries of the Lords of the Committee of Trade and Plantations as to the religious condition of the inhabitants, he said he thought such census would be unwise,[5] and added, "That, at the first peopling of this Province by my father, albeit he had an absolute liberty given to him and his heirs to carry thither any persons out of any of the dominions that belonged to the crown of England, who should be found willing to go thither, yet, when he came to make use of this liberty, he found very few who were inclined to go and seat themselves in those

[4] Lords Baltimore, 90. B. T. Johnson, 18 Fund Pubs., 147, thought that Father More, English Provincial of the Jesuits, might have drafted the bill. See Remsen's Address at the Unveiling of the Blashfield Mural Painting in the Courthouse of Baltimore City.

[5] 5 Md. Arch., Coun., 267. G. Petrie's Church and State in Early Md., 10 J. H. U. Studies. 22 Cath. World, 299. R. H. Clark in Mr. Gladstone and Md. Toleration. Cardinal Manning, Vatican Decrees in their Bearing on Civil Allegiance, p. 88 (N. Y. ed.). W. H. Gladstone, Vaticanism, p. 96; "The measure was really defensive; and its main and very legitimate purpose plainly was to secure the free exercise of the Roman Catholic religion." 1 Bancroft, U. S., Ch. VII. Gladstone (Preface 8), Rome and the Newest Fashions in Religion. 10 Am. Cath. Quar. Rev., 659, Md. and the Controversies as to her Early History, by John G. Shea.

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parts, but such as, for some reason or other, could not live with ease in other places and of these, a great part were such as could not conform in all particulars to the several laws of England relating to religion. Many there were of this sort of people, who declared their willingness, to go and plant themselves in this Province, so as they might have a general toleration settled there by a law, by which all of all sorts, who professed Christianity in general, might be at liberty to worship God, in such manner as was most agreeable to their respective judgments and consciences, without being subject to any penalties whatsoever for their so doing, provided the civil peace were preserved. And that for the securing the civil peace and preventing all heats and feuds, which were generally observed to happen amongst such as differ in opinions, upon occasion of reproachful nicknames and reflecting upon each other's opinions, it might, by the same law, be made penal to give any offence in that kind.[6] These were the conditions proposed by such as were willing to go and be the first Planters of this Province, and, without the complying with these conditions, in all probability, this Province had never been planted. To these conditions, my father agreed and, accordingly, soon after the first planting of this Province, these conditions, by the unanimous consent of all who were concerned, were passed into a law."

This law begins negatively, decreeing death and forfeiture of property as the penalty for blasphemy of God or denial of the Trinity.[7] "Reproachful" speeches concerning "the blessed Virgin Mary, the Mother of our Saviour,[8] or the holy apostles, or evangelists," shall be pun-

[6] Johnson in 18 Md. Hist. Soc. Fund Pubs., 126, disproves Gladstone's statement that the Colonial Act was "an echo" of any events in England.

[7] Yet Jews lived peacefully in the Province.

[8] Notice that no other saints are referred to. Langford's Just and Clear Refutation of Babylon's Fall tells the story that in a Parliamentary committee some one threw out this reference to the Virgin as an objection to Baltimore, whereupon another said, "Doth not the Scripture say that all generations shall call her blessed?" and the committee said no more. 2 Bozman, 352.

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ished by a fine of £5, or whipping and imprisonment during pleasure of the Proprietary if the culprit be unable to pay, for the first offense; by £10 fine, or whipping and imprisonment, for the second offense, and by forfeiture of all property and perpetual banishment for the third offense.

The third section provides that any person who shall, in reproachful manner on occasion of offense, call any one, permanently or temporarily within the Province, "heretic, schismatic, idolator, puritan, independent, presbyterian, popish priest, jesuit, jesuited papist, Lutheran, Calvinist, anabaptist, Brownist, antinomian, Barrowist, round head, separatist, or any other name . . . relating to matters of religion shall pay 10 shillings, half of which shall go to the one taunted." If the offender cannot pay, he shall be whipped and imprisoned until he satisfy the injured party by asking public forgiveness before the magistrate. It is probable that this was never enforced.

The act next provides punishment for one who profanes the "Sabbath or Lord's Day, called Sunday, by frequent swearing, drunkenness, or by any uncivil or disorderly recreation, or by working on that day when absolute necessity doth not require it." He shall be fined two shillings and sixpence for the first offense; five shillings and tenpence for the third, or imprisoned for the first and second offenses and whipped for each succeeding one, if unable to pay. This clause shows Puritan leanings, and because of its use of the word Sabbath for Sunday, and not for Saturday, has been thought to have been added or amended by the Assembly.[9]

Here ends the first part of the act. The second preamble states that "the enforcing of the conscience in matters of religion hath frequently fallen out to be of dangerous consequence in those commonwealths where it hath been practiced," and that quiet and peaceable government of the Province and "mutual love and amity" among the people are most to be desired. Therefore no person in Maryland

[9] 2 Bozman, 353. Hall, 77; cf. 1 Md. Arch., Ass., 261.

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"professing to believe in Jesus Christ shall, henceforth, be any ways troubled, molested or discountenanced" for his religion, or in the exercise of it, nor shall he be compelled to believe any other religion against his consent. Only he must be faithful to the Proprietary. If any person does molest another Christian for his religion, he must pay him treble damages, and for each offense forfeit twenty shillings, half of which shall go to the injured party, or be punished by whipping and imprisonment during the pleasure of the Proprietary if he cannot pay. Finally, the sheriff is authorized to distrain and seize the goods of any offender against the act. Such are the provisions of the act[10]—narrow as compared with our position today, wonderfully broad for the seventeenth century. With this enactment we may well close our study of Maryland during the English Civil Wars. The contention between the Puritans and the Lord Proprietary during the next decade forms another chapter in the history of the Province.

[10] Brantly, in 3 Winsor's Nar. and Crit. Hist. of Am., 534, calls this act "the first law securing religious liberty that ever passed a legally constituted legislature." See also 37 New Englander, 742 (1878), Reconstruction of the History of the Early R. C. Legislation in Maryland, with regard to religious freedom.

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IN
CONSTITUTIONAL AND INTERNATIONAL LAW

BY

ROBERT TREAT CRANE

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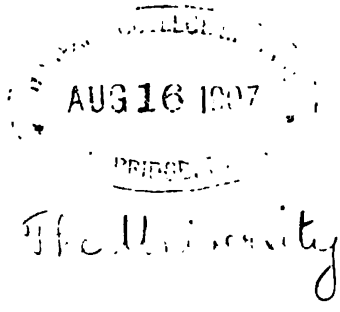

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THE STATE IN CONSTITUTIONAL AND INTERNATIONAL LAW.[1]

CHAPTER I.

Introduction.

The thesis that the concept of the state in constitutional law must be discriminated from the concept of the state in international law is the outcome of a line of inquiry opened by the preparation of a paper for the Political Science Seminary of The Johns Hopkins University on the topic of "Suzerainty." An investigation of the authorities on this subject disclosed a veritable chaos. So great appeared the confusion of political science on this point that an examination of other political conceptions immediately suggested itself. There, too, lack of definiteness and uniformity was found.

The source of this confusion lies in the fact that these concepts are defined largely in terms of state and sovereignty; and it is these very terms that are themselves the most lacking in accepted values. In regard to the term "sovereignty," in particular, there is a dispute so hardily sustained that no definition is even tolerably acceptable to over one-half the students of politics. In fact, the absence of accord upon this fundamental question produces a schism in political philosophy so deep as to cleave it almost asunder,

[1] I wish to express my gratitude to Dr. W. W. Willoughby, under whom my studies in political science have been pursued, not only for his constant and careful criticism of this dissertation during its preparation, and for the generous contribution of ideas by which he has attempted to correct some of its obvious deficiencies, but especially for his kindly inspiration at all times.

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since it is as one of the immediate results of this dissension that the question of the divisibility or indivisibility of sovereignty has apparently separated political thinkers into two groups so widely dissimilar in their views that it may almost be said that there are two political sciences. Since the subject-matter with which both of these groups of scientists deal is the same there would appear to be room for but one science. Yet it certainly requires a stretch of the idea to denominate as one science that which exhibits throughout two sets of standards the application of which to identical situations leads to results mutually untranslatable.

As has been said, the conflict between the two groups of thinkers revolves most hotly about the question of the divisibility of sovereignty. It is, of course, absurd to charge the semi-sovereigntists with lack of logic by alleging that they deem it possible to divide a supreme will; for they do not define sovereignty as supreme *will,* but as supreme *power,* and for that reason are able to assert the validity of their conception of a "semi-sovereignty." There really is no question, then, of the logical possibility of semi-sovereignty, as that question is usually understood. The real question grows out of the two different conceptions of sovereignty as will and as power. These two different ideas of sovereignty go hand in hand with two different conceptions of the state, for the ideas of state and sovereignty are too closely knit together to separate the one entirely from the other. It is, therefore, these two pairs of concepts that are considered in this inquiry: that is to say, on the one hand that theory of state and sovereignty from which is deduced the indivisibility of the latter; and, on the other hand, that theory which leads to the assertion of a divisible sovereignty.

A brief survey of political writings shows that the former of these theories has been developed and is held mainly by those authors who are most interested in the state from the

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internal point of view; and the latter theory, that of indivisibility, by those who are chiefly concerned in the external relations of the state. Although this classification may be subject to many exceptions, it is nevertheless fair to attach the theory of indivisibility to analytical jurisprudence, which deals with municipal, or constitutional, law, and to attach the theory of divisibility to international law. Accordingly, the third and fourth chapters of the dissertation are devoted respectively to purely expository accounts of the constitutional, and of the international, theories of the state.

The expounders of each of these theories are thus seen to have a different original province of interest to which they have primarily directed their inquiries. Each school seeks, however, to apply its own theory throughout the entire range of political speculation; each regards its central concepts as of exclusive validity. To no question, from the status of the meanest subject to the most delicate relations of the great powers with one another, does either school deem its respective theory inapplicable.

It is true that, logically, analytic theory is extended to cover communities to which are denied the application of the principles of international law. Actually, however, such communities have been no more disregarded by the international school than by the other, owing perhaps to the influence of the former school, or quite possibly owing simply to paramount interest in the great nations of the world. The statement remains essentially correct, therefore, that the two schools of political philosophy seek to apply their principles to precisely the same objective material.

So opposite and irreconcilable do the two systems of thought appear that every student of politics would seem compelled to make a choice between them, and this process of choice, of accepting one theory and rejecting the other, has continued for centuries. Generations after gene-

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rations of scholars have entered the science and made this choice: and yet what is the result? A fairly equal development, it may be answered, of each theory; equal accession of adherents to each; equal antiquity and equal modernness in each; equal insistence by each on its own claim to exclusive validity. As the years have passed, one illustrious name after another has been added to the disciples of the one theory and antagonists of the other, and one name after another, equally renowned, to the opponents of the former theory and partisans of the latter, until now each theory rests on authority so learned, so worthy of esteem and honor, that it must appal one, who has confidence in the power of human thought, to characterize either theory as radically false because of the logical absurdity of the concepts with which it works.

In consequence, the hypothesis is here advanced that each of these two theories has an exclusive sphere of utility and fundamental validity within the field of political phenomena. In order to restrict each theory to a limited sphere of operation it is necessary to discover elements inherent in the theory that properly negative its application within the sphere of the other. The endeavor is not to uphold either theory, even within a given sphere, for each has ample authority behind it; but to exclude each from a given sphere which shall thus be left undisputed to the other. It is negative criticism that is required. It is to this task that the fifth and sixth chapters are given.

The result of this critical consideration of the two theories is to show that that theory which has in anticipation been denominated the "constitutional theory" must be logically confined to the constitutional, or municipal, law of the state, and the international theory in like manner is limited to the domain of international law. The state, as a constitutional concept, is composed of elements different from those which make up the concept of the state in international law. In the seventh chapter an attempt is made to indicate the value

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of this recognition and limitation of both theories, in dealing with certain conceptions of constitutional and international law.

No endeavor is made to apply the principles set forth to existing political phenomena; that is, to make a scientific application of these principles. Philosophy, in one sense at least, is the comprehensive synthesis of the doctrines and methods of science. The establishment of such principles for political science is the problem of political philosophy; it is with this philosophical problem that this dissertation is exclusively concerned.

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CHAPTER II.

Present Political Terminology Unsatisfactory.

Political science deals with all matters in any way pertaining to communities of men as organized for the determination of human liberty and restraint in action. Thus it treats of the relations of these communities with one another and of their internal organization into governed and governors, of the authority and powers of governments, of the various forms of governmental organization, etc. It seeks to analyze such political phenomena as these, so that it may accurately classify the bodies with which they are connected into definite groups with distinctive titles.

The value of a technical vocabulary lies in its accuracy, the precision with which it is capable of communicating ideas. Uncertainty as to the nature of the category or concept to which a term refers, or doubt as to which of two or more ideas it is meant to represent, destroys its utility. Of course, it is not pretended that such indefiniteness and uncertainty may not exist in the public mind. Especially in the realm of politics are scientific terms popularly employed in a loose and unphilosophical manner. Thus, the word "sovereign" is found to designate variously the titular head of the state; the law-making body; the constitution-making body; in a yet wider sense, the whole nation or people; and even the abstract law. No scientific term should, however, produce uncertainty or indefiniteness in the minds of students of that science. To them, every term used in the science should express a certain and clear conception.

In what measure, it may be asked, does the terminology at present employed in political science conform to these requirements? An examination of its particular terms will afford the best answer.

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Such a term as "suzerainty," for example, should convey a very distinct idea. It is used by nearly every writer on international law; and often used without explanation, upon the apparent assumption that its meaning is perfectly established and recognized. Thus Hannis Taylor, in his large treatise, says: "The suzerainty of the Porte over Egypt, which for centuries was a vassal state of the Ottoman Empire, administered through a Turkish Pasha," was placed in imminent peril by Mehemet Ali; and now "government is carried on under the direction and advice of Great Britain as the real suzerain." Mr. Taylor, however, nowhere says what constitutes either a "vassal state" or a "real suzerain."[1] Other writers, also, serenely employ this term without definition, as though confident of its current valuation.

Upon how good or how ill a foundation this faith is based may be readily apprehended by a comparison of the views of the authors quoted below.

Le Fur says suzerainty is the relation of a sovereign state to a non-sovereign state: "Dans un groupement d'Etats réunis à un autre Etat par des liens de vassalité, la souveraineté appartient à l'Etat suzerain, sans que les autres membres du groupe possèdent une participation quelconque à l'exercise du pouvoir suprême."[2]

Sirmagieff finds nothing in common between feudal and modern suzerainty, since: "Les engagements entre seigneurs et vassaux étaient des engagements entre particuliers plutot qu'entre Etats."[3] Suzerainty and semi-sovereignty he considers synonyms.

Rivier says a suzerainty is the same as a protectorate, and exists over a semi-sovereign state: "Aujourd'hui, lorsqu'on parle d'Etats vassaux, il s'agit d'Etats mi-souverains. —L'Etat mi-souverain est subordonné à un autre Etat, qui est le suzerain, aussi nommé protecteur. La relation de

[1] International Public Law, pp. 182–3.
[2] Etat fédéral et confédération d'états, p. 303.
[3] De la situation des états mi-souverains, p. 181.

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suzerain à mi-souverain est fréquemment qualifiée de protectorat."[4]

Boghitchevitch declares suzerainty to denote a species of semi-sovereignty: "Wir glauben deshalb, ohne tätsachlichen Verhältnissen Gewalt anzuthun, das Wort suzerän nicht mehr in lehensrechtlichen Sinne gebrauchen zu mussen, wobei wir freilich den lehensrechtlichen Ursprung bereitwilligst anerkennen, sondern vielmehr den Begriff der Suzeränität lediglich als Teil der Gesamtverhältnisses der Halbsouveränität hinstellen zu sollen, als einen modernen völkerrechtlichen Begriff."[5]

Freund finds the relation that of a community tending towards independence of its superior, and distinguishes it from protectorate: "The fact seems to be that suzerainty is generally the remnant of former sovereignty, while the protectorate is a transitional form, chosen to palliate the new loss of political independence and intended to prepare a more perfect form of political union. The suzerain receives more formal recognition than the protector, but exercises less effective control. Suzerainty is title without corresponding power; protectorate is power without corresponding title."[6]

Hall's opinion agrees with that of Freund, but the former finds in addition a *prima facie* presumption against the independence of the subordinate community: "States under the suzerainty of others are portions of the latter which during a process of gradual disruption or by the grace of the sovereign have acquired certain of the powers of an independent community, such as that of making commercial conventions, or of conferring their exequatur upon foreign consuls. Their condition differs from that of the foregoing varieties of states [i. e. those joined to others by a personal, real, federal, or confederate union] in that a presumption exists against the possession by them of any given inter-

[4] Principes du droit des gens, Vol. I, pp. 52, 80.
[5] Halbsouveränität, p. 102.
[6] Dependencies and Protectorates. Political Science Quarterly, Vol. XIV, p. 28.

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national capacity. A member of a confederation or a protected state is *prima facie* independent, and consequently possesses all rights which it has not expressly resigned; a state under the suzerainty of another, being confessedly part of another state, has those rights only that have been expressly granted to it, and the assumption of larger powers of external action than those which have been distinctly conceded to it is an act of rebellion against the sovereign."[7]

Bonfils also discriminates between suzerainty and protectorate, and finds numerous specific rights almost constant in the subordinate state: "L'Etat Vassal n'a qu'une souveraineté amoindrie, dérivant d'un autre Etat, suzerain, envers lequel il est dans un rapport de subordination. Ce rapport peut aller de la dépendance complète à une liberté relative. Comme le protectorat la vassalité est susceptible de degrès nombreux et variés. Néanmoins quelques caractères sont presque constant: la privation absolue de la jouissance et de l'exercise de la souveraineté extérieure (sauf exception très rare); par suite, le respect par le vassal des traités politiques, commerciaux, douaniers, etc., conclus par le suzerain; l'obligation de payer un tribut; la négation du droit de frapper monnaie; l'intervention plus ou moins intense, plus ou moins étendue du suzerain dans la législation, dans l'administration de la justice, de l'armée, de l'instruction publique, dans la construction des voies ferrées ou le creusement de canaux," etc.[8]

McIlwraith hazards the opinion that suzerainty implies a semi-sovereign state subordinate to another, but not openly: "Semi-sovereign states are usually divided into two classes, (1) those which are the subject of a declared Protectorate, (2) those which, although not the subject of a declared protectorate, are yet in a certain condition of subordination with regard to some other state. The latter are designated by international lawyers as vassal states, and the state to which they are subordinate is known as the

[7] International Law, pp. 19, 25.
[8] Droit international public, p. 102.

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suzerain power. . . . The principal criterion of this relationship is the question of international representation."[9]

Oppenheim maintains that suzerainty and sovereignty have no connection: "The modern suzerainty scarcely contains rights of the suzerain state over the vassal state which could be called constitutional rights. The rights of the suzerain state over the vassal are principally international rights only, of whatsoever they may consist. Suzerainty is by no means sovereignty."[10]

There are two authors whose treatment of suzerainty deserves especial attention. Both of these writers trace the use of the term from feudalism, but with directly opposite results.

Stubbs holds that suzerainty in the feudal sense, and with all its feudal attributes, still exists. He concludes his article: "It will appear that vassal states are of two distinct classes, nominal and real, that from both classes there are due to the suzerain certain feudal duties; that these duties in no way interfere with or modify the exercise of the rights possessed by the vassal states; that these rights include, in the case of nominal vassalage, both all external and all internal rights, by reason of the nominal vassal being in every way sovereign; that in the case of real vassalage (the class including every vassal state lacking a single sovereign right) the rights, by reason of the non-sovereignty of the vassal, include none that are exterior, and only those interior rights which are expressly granted by the suzerain, and that the special duties engendered by the peculiar relationship are on the part of the vassal, fidelity, service, and respect, and on the part of the suzerain, the obligation to protect and defend the vassal, the duties being correlative and mutual."[11]

Kelke, on the other hand, denies the existence of any connection whatsoever between feudal and modern suze-

[9] The Rights of a Suzerain, Law Quarterly Review, 1896.
[10] International Law, p. 134.
[11] Suzerainty: Mediæval and Modern. Law Mag. and Rev., Series 4, Vol. VII, p. 279.

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rainty. Of the relation of vassal to suzerain, he says: "What is essential is that there must be (1) a real restriction of sovereign rights as against the former [the vassal] in favor of the latter, and (2) no *quid pro quo* (or *semble* an obviously and highly inadequate consideration) moving from the latter the suzerain to the former. And (3) in practice it will be found where this is so that (as a matter of fact rather than of law) the convention will be unilateral, i. e. it will be easy for the superior to terminate it, and difficult or impossible for the inferior to do so. Lastly, and above all, (4) the scope and extent of the restriction on sovereign rights will be found in, and only in, the treaty, convention, or other public document whereby the suzerainty is constituted. . . . The modern suzerain has nothing beyond his treaty rights."[12]

Surely the authors whose views have just been cited give to suzerainty a wide field of meaning. The vassal state may be either sovereign, semi-sovereign, or non-sovereign. Most, indeed, of the authors mentioned favor the theory of a semi-sovereignty, but even these are in great disagreement among themselves; some denominate as "vassals" all semi-sovereign states; others divide these into "vassals" and "protectorates." Again, those who make the latter distinction differ widely as to the essential characteristics of each class.

Some of these scientists have discussed suzerainty entirely from the modern standpoint; others have sought a connection between the modern and the feudal situations. Of the latter, all but one have denied such a connection; that one has made the two forms identical.

So much, then, for "suzerainty." The same confusion is to be found in the use of the term "federal state." Below are quoted from various sources definitions of this term.

Le Fur says the peculiar characteristic of the federal

[12] Feudal Suzerains and Modern Suzerainty. Law Quarterly Review, 1896, p. 226.

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state is the joint participation of the several subordinate states collectively, and their citizens individually, in the formation of the sovereign will: "Un seul caractère peut être considéré comme appartenant en propre à l'Etat fédéral, c'est l'existence dans cette forme d'Etats, entre l'Etat lui-même et ces citoyens, d'un nouveau facteur coopérant comme les derniers à la formation de la volonté souveraine. Ce nouveau facteur, ce sont les Etats particuliers, qui participent à la souveraineté sous une double forme, tantôt indirectement, par l'intermédiaire de leur représentants, tantôt directement, surtout en matière de révision constitutionelle, grâce à l'existence d'un véritable *referendum* d'Etats, semblable à celui qui existe au profit des citoyens dans les républiques démocratiques. Cette participation de certaines collectivités publiques à la formation de la volonté souveraine existe, on l'a vu, dans tout Etat fédéral; et à l'inverse elle n'existe que là."[13]

Brownson finds sovereignty in the states only as a unit: "While the sovereignty is and must be in the states, it is in the states united and not in the states severally."[14]

Von Mohl declares sovereignty divided between the collective state and its members: "Als Bundesstaat bezeichnet man aber bekanntlich diejenige Vereinigung von Staaten, über welcher eine gemeinschaftliche Regierung mit allen dazu nothwendigen Rechten und Organen besteht, so dass die Selbständigkeit und namentlich die völkerrechtliche Souveränität der einzelnen theilnehmenden Staaten sehr geschmählert ist, und eine durchgehende Theilung der Regierungsrechte zwischen ihnen und der oberen Gesammtgewalt stattfindet."[15]

Woolsey finds the peculiar nature of the federal state in the existence of spheres of independent action both in the central government and in its members: "The two poles of a federal government are independent action of the mem-

[13] Etat fédéral et confédération d'états, p. 673.
[14] The American Republic, p. 221.
[15] Staatswissenschaften, Vol. I, p. 560, ed. 1855.

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bers in certain things, and a central power or government which, in certain things, is equally independent."[16]

Sidgwick says: "We thus arrive at the general idea of a 'federal' state, as a whole made up of parts politically co-ordinate and constitutionally separate."[17]

Rüttiman declares the component elements to be individual states, which in certain directions exhibit only collectively the form of a single state: "Der Bundesstaat verbindet eine grössere oder kleinere Anzahl geographisch zusammenhängender Staaten so, dass sie in gewissen Richtungen die Gestalt eines einheitlichen Staates erhalten, während sie im Uebrigen ihr selbständiges und getrenntes Dasein fortsetzen."[18]

Laband holds that the subordinate states exercise a part of sovereignty individually, a part also as a unit: "Die Träger der Landes-staatsgewalt bilden dann zusammengenommen die juristische Person des öffentlichen Rechts, welche das Subjekt der, unter dem Namen Reichsgewalt zusammengefassten, Hoheits- oder Herrschafts-rechte ist."[19]

Waitz recognizes a division of sovereignty between the collective state and the individual states: "Nur da ist ein Bundesstaat vorhanden, wo die Souveränetät nicht dem einen und nicht dem andern sondern beiden, dem Gesammtstaat (der Centralgewalt) and dem Einzelstaat (der Einzelstaatsgewalt) jedem innerhalb seiner Sphäre, zusteht."[20]

Hänel discovers the federal state only in the collective states together with the individual states, all taken as a whole: "Nicht der Einzelstaat, nicht der Gesammtstaat sind Staaten schlechthin, sie sind nur nach der Weise von Staaten organisierte und handelnde politische Gemeinwesen. Staat schlechthin ist nur der Bundesstaat als die Totalität beider."[21]

Moore declares the federal state alone sovereign: "Where

[16] Political Science, Vol. II, p. 167.
[17] The Elements of Politics, p. 507.
[18] Nordamerikanisches Bundesstaat, Theil I, 54.
[19] Das Staatsrecht des Deutschen Reiches, Vol. I, p. 72.
[20] Gründzüge der Politik, p. 166.
[21] Studien zum Deutschen Staatsrechte, Vol. I, p. 23.

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states are united under a central government, which is supreme within its sphere and which possesses and exercises in external affairs the powers of national sovereignty, they are said to form a federal union. 'The Composite State, which results from this league, is alone a sovereign power.' "[22]

Burgess sees but a single state under the federal form of organization: "Federal government is the form in which, as to territory and population, the state is co-extensive in its own organization with the organization of the general government. . . . In the federal system we have one state, one central government and several local governments."[23]

Borel finds the federal state sovereign, but the exercise of sovereignty shared to a greater or lesser degree with subordinate communities: "L'Etat fédératif est un Etat souverain, dont les membres ne sont pas souverains. . . . L'Etat fédératif est donc l'Etat dans lequel une certaine participation à l'exercise du pouvoir souverain est accordée à des collectivités inférieures, soit q'on les adjoigne à l'organe souverain pour la formation de la volonté nationale, soit que, prises dans leur totalité, elles forme elles-même cet organe souverain."[24]

Jellinek holds the subordinate communities to be states, yet non-sovereign: "Ein Bundesstaat ist daher ein Staat, in welchem die souveräne Staatsgewalt die Gesammtheit der in ihrem Herrschaftsbereich auszuübenden Functionen verfassungsmässig derart vertheilt, dass sie nur ein bestimmtes Quantum derselben sich zur eignenen Ausübung vorbehält, den Rest jedoch ohne Controle über die Festsetzung der regelnden Normen, sowie über die Art und Weise der Ausübung selbst, insoferne nur die verfassungsmässigen Schranken eingehalten werden, den durch diese verfassungsmässige Zuweisung von selbständiger staatlicher Macht geschaffenen nicht-souveränen Gliedstaaten überlässt."[25]

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[22] Digest of International Law, Vol. I, p. 23.
[23] Political Science and Constitutional Law, Vol. II, p. 6.
[24] La souveraineté et l'état fédératif, pp. 74, 172.
[25] Die Lehre von den Staatenverbindungen, p. 278.

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It will doubtless be assented that neither of the terms that have now been examined conveys any very definite idea or determinate conception. Their value appears to depend almost wholly upon the person who uses them. They are each employed to designate a category of political phenomena; but as to what are the distinctive properties belonging to the respective categories scarcely two authorities are found to agree.

Unfortunately, the terms that have been investigated are fairly typical of the whole terminology provided by political science. The same situation can be shown in connection with other terms. In the course of the exposition of the above expressions there has been incidentally indicated a similarly confused condition of the terms "protectorate" and "confederation." Equal uncertainty is developed by an examination of the nature of a "protected state," "neutral state," "neutralized state," "belligerent community," "sphere of influence," of "real" and "personal unions," and of other terms used to designate various phases of state life.

Such a condition of political science is almost intolerable. A common, definite, and exact use of terms within the science is an absolute essential. Perfect unanimity may never be attained; yet a relative agreement in the use of terms among publicists is necessary to successful collaboration and even to mutual comprehension.

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CHAPTER III.

The State According to Constitutional Law.

It has already been said that the theory of an indivisible sovereignty proceeds from that view which regards it as will. Turning first to a consideration of the idea of sovereignty defined as the supreme will of the state, and to a consideration of that conception of the state in which sovereignty is supreme will, we find these inseparable ideas developed in accordance with the classification herein proposed by the analytical jurists, chief among whom are Bodin, Hobbes and Rousseau.

It was Bodin who, in the latter half of the sixteenth century, laid the foundation for a scientific theory of the state. He claims, and with reason it appears, that he is the first writer to attempt accurate definition of political concepts. Not since the time of Aristotle and his "city-state," with its "self-sufficiency" as a mainspring, had such an attempt been made. To the Romans there was but the single Roman state, and a troublesome analysis of this one specimen seems to have appeared to them unnecessary; or perhaps they were too busily engaged in developing its fact to find time for its theory. Their Teutonic conquerors, likewise, seem to have had more genius for political building than for political theorizing. With the growth of the conflict between Church and State, political philosophy had, indeed, once more become a matter of importance; but there were inherent in the period deep difficulties in the way of truly scientific research. The sometimes real, sometimes shadowy, always indefinite authority of the Emperor; the intricate maze of feudal contract binding step by step from Emperor to peasant; the now waxing, now waning, power of the Papacy, here arrogant and there abased before temporal rulers—these were conditions under which

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the attainment of fundamental political concepts was well-nigh impossible.

Yet it is not to be supposed that the Middle Ages were entirely devoid of political theorizing. With the rapidly increasing centralization of monarchical power the ancient dispute as to the respective rights of ruled and ruler again became prominent; and thus gave a new impulse to political inquiry. An odd feature of the period is that political doctrine was developed quite as much by churchmen as by laymen; when the latter spoke of the "Prince," the former spoke of the "Pope;" when the latter said the "People," the former said the "Faithful." Yet churchmen and laymen alike fell far short of any broad and scientific treatment of political phenomena.

All authority was conceived during the Middle Ages as emanating from God; therefore the impossibility was manifest of predicating anything absolutely of a mere human institution. All earthly rulers could be only mediately or immediately appointed ministers of the divine power. Their authority was thus what was delegated to them by God only, and could never, of course, be conceived as supreme.

Slowly, however, there was conceded to human society somewhere within itself a *plenitudo potestatis*—a power generally creative of positive law, and limited (if limited be the proper term) only by morality, by divine law, and by the law of nature.

It was the location of this power that henceforth became the subject of controversy. It seems to have been universally considered as belonging originally to the mass of the people, and as being transferred under a governmental compact to the ruler. Although the latter was still regarded as holding indirectly of God, he nevertheless held immediately by virtue of the consent of the people. The sole question, thus, was as to the nature of this transaction between ruler and people. By some writers this was held to constitute a complete and irrevocable alienation of all the power of the people to the ruler—a perfect *translatio;* by

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others to constitute a mere delegation of the power of the people for limited purposes and subject to revocation for misuse or breach of the contract by which it was obtained —in short, a simple *concessio.* The question of the true nature of the power was in this way overlooked for the then more immediately important question of its situs. The controversy may be briefly summarized, therefore, in the two phrases of the day, *princeps major populo* and *populus major ipso principe.*

In regard to what was a *princeps* these theorists were not definite in distinguishing between the various grades of the yet existing feudal hierarchy. Similarly indefinite were they in consequence as to what constituted a *populus,* nor for a long time did the term *populus* stand for anything more than the simple sum of the subjects over whom a *princeps* ruled. It was conceived as a multitude of individuals, not as an entity. It is perhaps better translated "public," therefore, than "people." *Populus* was a mere shorthand or collective name, a mere symbol or algebraic sign, bearing no implication of unity. Later, however, the *populus* came to be spoken of as a body—as a person—in, however, an always purely artificial sense. To it was accorded a feigned "personality," a convenient conception borrowed from the civil and canonical law. According to Roman law, or at least to its Italian version, the only real persons are human individuals; but to the *universitas,* or corporation, was attributed a fictitious personality by analogy. Thus it is more correct to say that the corporation was personified than that it was held to be a person. When, therefore, the *populus* was denominated a *persona,* it must be remembered that always and only was meant a *persona ficta.* This fiction theory of the corporation has persisted through the centuries, and it is embodied at this day in the systems both of the civil and the common law; it appears long to have given authors intense satisfaction to draw out the anthropomorphic comparison to great length by finding some corresponding element of the fictitious person to iden-

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tify with every member of the human body and every faculty of the human soul.

As contrasted with this scanty and desultory philosophizing of the mediæval writers, the work of Jean Bodin appears almost creative of a new science. By the time his treatise on the state was composed (the first edition was published in 1576), political conditions in France as well as elsewhere had undergone a fundamental change from those of many centuries past. The authority of the Emperor no longer existed so far as France was concerned, absolute monarchy had brought unity out of the chaos of feudalism, and the light of the Renaissance was sufficient to render possible the formulation of a clear distinction between Church and State. Afforded thus in his own country a comparatively unobscured example of state life, Bodin found at hand the material for such a broad and methodical study as had previously been attempted only by the ancient Greeks. The incentive to philosophical analysis also was not lacking; for with the growth of absolute central authority in one person, the significance of the vastness of political power grew constantly more defined, and its justice and rightfulness in consequence more and more exposed to the force of criticism. It was thus upon the sea of mediæval controversy between ruler and ruled, growing more disturbed with the years, that Bodin embarked on the side of monarchical absolutism; yet withal with so fair and open a mind, that it may be doubted whether any subsequent publicist has reached so purely impartial and philosophical a standpoint.

The first words of the *Six livres de la république* constitute a definition on which the whole work of Bodin is based: "République est un droit gouvernement de plusieurs mesnages et de ce qui leur est commun avec puissance souveraine." The formulation and painstaking elaboration of this definition mark truly the beginning of modern political science, for it is not left dependent on dogmatic assertion but is discussed and developed by forceful argument and by multitudinous illustration. The elements of the defini-

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tion are in turn defined, their component ideas explained at length, and many of their logical consequences deduced.

Aside from his excellent new method, Bodin's great importance is due chiefly to his treatment of the last term in his definition of the state. He for the first time definitely and formally defined sovereignty as the essential element of the state, the characteristic by which its existence is to be conclusively ascertained. Thus he says: "Of many citizens . . . is made a Commonweale, when they are governed by the puissant sovereignty of one or many rulers; albeit that they differ among themselves in laws, language, customs, religions, and diversity of nations."[1] And that this statement is not incautiously made, but with due refutation of the Greek philosophy, is seen when he continues: "Aristotle hath defined unto us a city to be a multitude of citizens, having all things needful for them to live well and happily withal: making no difference between a Commonweale and a city: saying also that it is not a city if all the citizens dwell not in one and the selfsame place: which is absurdity in matter of a Commonweale."[2] "It behoveth first," however, as Bodin writes, "to define what majesty or sovereignty is, which neither lawyer nor political philosopher hath yet defined: although it be the principal and most necessary point for the understanding of the nature of a state." Wherefore, his formal definition is, in the French edition, "Souveraineté est la puissance absoluë et perpetuelle d'une république;" or, as it stands in the Latin, "Majestas summa in cives ac subditos legisbusque soluta potestas."

Sovereignty, therefore, according to Bodin, is power first of all over the "citizens and subjects of the state." Of these he says: "A citizen . . . is a free subject holding of the sovereignty of another man;"[3] for "every subject is not a citizen, as we have said of a slave; and may also so say of a stranger, who coming into another man's seigniory, is not received for a citizen, having not any part in the rights and privileges of the city."

[1] Op. cit., ed. Knolles, p. 49.
[2] Op. cit., p. 50.
[3] Op. cit., p. 47.

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In the second place, sovereignty is perpetual power. However perfectly it may possess all the other characteristics, it is yet not sovereign power unless it be of indefinite duration, which, in the case of its being bestowed upon an individual, is for not less than his life.

Finally, according to the definition of Bodin, sovereignty is power absolute, *legibusque soluta.* In discussing this characteristic he declares that the sovereign need give no "reason of his doings;" that he is "exempted from the laws of his predecessors;" and "much less is he bound unto the laws and ordinances he maketh himself; for a man may well receive a law from another man, but imposible it is in nature for to give a law unto himself, no more than it is to command a man's self in a matter depending of his own will: For as the law saith '*Nulla obligatio consistere potest, quae a voluntate promittentis statum capit:*' . . . which is a necessary reason evidently to prove that a king or sovereign prince cannot be subject to his own laws. And as the Pope can never bind his own hands (as the canonists say); so neither can a sovereign prince bind his own hands, albeit that he would." Sovereignty is not free, nevertheless, from the "laws of God and nature;" for, if princes impugn these, they be "guilty of high treason to the divine majesty, making war against God."[4] "In such sort," he adds later, "that they cannot be from the same exempted . . . but that they must be enforced to make their appearance before the tribunal seat of almighty God."[5]

The sovereign is also bound by contracts made by him either with his subjects or with other sovereigns. The distinction between law and contract Bodin makes quite clear. "We must not then," he says, "confound the laws and contracts of sovereign princes, for that the law dependeth of the will and pleasure of him that hath the sovereignty, who may bind all his subjects, but cannot bind himself; but the contract between the prince and his subjects is mutual, which reciprocally bindeth both parties, so that the one

[4] Op. cit., p. 92.
[5] Op. cit., p. 104.

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party may not stand therefrom to the prejudice or without the consent of the other."[6]

In yet another way sovereignty is limited by Bodin, for, "touching the laws which concern the state of the realm, and the establishing thereof; for as much as they are annexed and united to the crown, the prince cannot derogate from them, such as is the law Salique."[7]

In the light of more modern philosophy it might be easy to impute to Bodin the conception of a moral, in place of a legal, sanction to the "laws of God and nature," and to the contracts of the sovereign. It is quite possible that he did have some such idea in a vague and misty way, but the assumption of the existence of any more definite idea is clearly unwarrantable. On the contrary, he expressly regarded what we would term "constitutional law" as above the sovereign power and as a limitation upon it. Clearly, therefore, Bodin fell short of the idea of legal absolutism.

It must be complained here that, as happens with many authors, Bodin's conception of sovereignty is by no means completely expressed in his formal definition. Sovereignty he has described as power most high, absolute, perpetual, and above the law. But of what is the substance of the power the definition does not directly speak. Having opened the way to the heart of the subject, he does, however, reveal its most essential element. "So we see," he finally concludes, "the principal point of sovereign majesty, and absolute power, to consist principally in giving laws, unto the subject in general, without their consent."[8] He says here, to be sure, "consist principally in giving," and he also enumerates a number of other marks or points of sovereignty; but he adds: "Under this same sovereignty of power for the giving and abrogating of the law, are comprised all the other rights and marks of sovereignty: so that (to speak properly) a man may say, that there is but this only mark of sovereign power, considering that all

[6] Op. cit., p. 93.
[7] Op. cit., p. 95.
[8] Op. cit., p. 98.

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other the rights thereof are contained in this, viz., to have power to give laws unto all and every one of the subjects, and to receive none from them."[9] Yet, he continues, "The power to make laws is not the proper mark of sovereignty, except we understand thereby the sovereign prince's laws; for that the magistrate may also give laws unto them that are within his jurisdiction, so that nothing be decreed by him contrary to the edicts and laws of his sovereign prince. And to manifest this point, we must presuppose that this word Law, without any other addition, signifieth the right command of him or them, which have sovereign power above others, without exception of person: be it that such commandment concern the subjects in general or in particular: except him or them that have given the law. Howbeit, to speak more properly. A law is the command of a sovereign concerning all his subjects in general: or else concerning general things."

One other characteristic of sovereignty Bodin deduced which is not included in his formal definition. Sovereignty, he says, cannot be divided: "For as a crown if it be broken in pieces or opened, looseth the name of a crown; so sovereign majesty looseth the greatness thereof, if any way be opened to tread under foot any right thereof; as by communicating the same with subjects. . . . It is also by the common opinion of the lawyers manifest, that those royal rights cannot by the sovereign be yielded up, distracted, or any otherwise alienated; or by any tract of time be prescribed against: and thus Baldus calleth them *Sacra Sacrorum,* of Sacred things the most Sacred; and *Cynus Individua* things inseparable, or not to be divided. And if it chance a sovereign prince to communicate them with his subject, he shall make him of his servant, his companion in the empire; in which doing he shall loose his sovereignty, and be no more a sovereign: for that he only is a sovereign, which hath none his superior or companion with himself in the same kingdom. For as the great sovereign God, cannot make another God equal to himself,

[9] Op. cit., p. 162.

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considering that he is of infinite power and greatness, and that there cannot be two infinite things, as is by natural demonstration manifest: so also may we say, that the prince whom we have set down as the image of God, cannot make a subject equal to himself, but that his own sovereignty must thereby be abased."[10]

The power of sovereignty that Bodin elaborates he tacitly ascribes to the people. He fully recognizes, indeed, that this power may be perpetually retained by the people; but he also asserts that it may be transferred to a ruler, for he says, "if the people shall give all their power unto anyone so long as he liveth, by the name of a magistrate, lieutenant, or governor, or only to discharge themselves of the exercise of their power: in this case he is not to be accounted any sovereign, but a plain officer, or lieutenant, regent, governor, or guerdon and keeper of another man's power;"[11] but "if such absolute power be given him purely and simply without the name of a magistrate, lieutenant, governor, or other form of deputation; it is certain such a one is, and may call himself, a Sovereign Monarch: for so the people hath voluntarily disseised and despoiled itself of the sovereign power, to seise and invest another therein; having on him, and upon him transported all the power, authority, prerogatives, and sovereignties thereof: as if a man should by pure gift deliver unto another man the property and possession that unto him belongeth: in which case such a perfect donation admitteth no conditions."

It is precisely at this point that Bodin was attacked by the Monarchomachen—a name applied to the anti-monarchic writers of the sixteenth and seventeenth centuries, of whom Johannes Althusius is the most important. Bodin having admitted that sovereignty lay always originally in the people, the Monarchomachen immediately deduced the impossibility of any diminution of this power of the people by the governmental compact or by any other mode of alienation. This contention finally yielded after a long

[10] Op. cit., 155.
[11] Op. cit., p. 88.

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struggle before the patent fact of the monarchical absolutism of the times, and its exponents appear now of slight importance in the history of the development of political theory.

It is worthy of note, however, that among these Monarchomachen, and as well among their absolutistic opponents, is first found any considerable use of the term "personality" in connection with the state. It is true that it is not of the state that they speak as a person; it is the people which is thus described. It cannot be claimed that the publicists of this period advanced very far beyond the Mediævalists in respect to the former of these conceptions. The personality of the people remained a purely atomistic, mechanical, creature of the imagination—a body which, save for the convenience of philosophic contemplation, was yet not a body but a mere collection of individuals. The personality of the ruler was nothing more than a personification of the rights and duties of an office.

Thomas Hobbes is the second in point of time of the great trio of analytical jurists. His important political writings, the *De Cive,* the *De Corpore Politico,* and the *Leviathan,* were published just at the middle of the seventeenth century.

Bodin had made sovereignty the characteristic and unifying element of the state; he had declared it to be in essence the power of creating law; he had, moreover, shown it to be perpetual, imprescriptible, and indivisible; but he had not completely freed it from legal limitations. In all these points he has been followed by subsequent writers. It was at the hands of Hobbes that the conception of sovereignty developed by Bodin received its final, highest elevation to absolute legal supremacy. Before examining this theory, however, it is necessary to speak of Hobbes' view of the origin and constitution of the state.

The governmental compact of which mention has been made presupposed an opposition between the ruler and the people. The purely mechanical conception of the mass of individuals called collectively the people has been exposed.

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In order that these numerous individuals might form one party to a contract, however, it was obscurely felt that they must in some sort constitute a body capable of unity of action. It has been pointed out that to this end use was made of a pure fiction; but the personality thus feigned was ascribed to an equally feigned body whose determinateness was apparently accepted as an existing fact. For many centuries the theory of divinely instituted authority was sufficient to account also for the determinateness of its subjects, but by the middle of the seventeenth century there had been developed from certain passages in the Bible and from Greek and Latin mythology the idea of a state of nature precedent to the state of civil society. In that state of nature men were governed by the law of nature, which was given to each man by his own right reason, and was interpreted by each for himself; there was thus nought in common between men, but on the contrary there existed a condition of complete individualism. Now the idea having been abandoned that the individuals (denominated a people) were divinely determined, and the situation premised that there was no natural bond of unity, and none prior to the institution of civil authority, it became a logical necessity to discover some factor that would reduce the multiplicity of the people to unity.

In speaking of the theories of the Middle Ages it has been said above that the people was then described as a *universitas*—a corporation. It has also been pointed out that the Italian conception of the *universitas* ascribed to it only a fictitious personality or unity; and it is probable, as Professor Maitland has suggested, that the corporate idea was now completely rejected, because it was seen that a fiction was not a logical explanation of an assumed fact. At all events, political theory for the next two centuries turned exclusively to the idea of a *societas,* which in Latin signifies simply a partnership, a union based on contract.

Thus Hobbes, having premised a state of nature in which each man's actions depend solely upon his own will, finds that no action can be ascribed to a multitude of men in

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this state, but only the same action to many men. "By multitude," he explains, "because it is a collective word, we understand more than one; so as a multitude of men is the same with many men. The same word because it is of the singular number, signifies one thing, namely, one multitude. But in neither sense can a multitude be understood to have one will given to it by nature, but to each a several; and therefore neither is any one action whatsoever to be attributed to it. Wherefore a multitude cannot promise, contract, acquire right, convey right, act, have, possess, and the like, unless it be every one apart, and man by man, so as there must be as many promises, compacts, rights, and actions, as men. Wherefore a multitude is no natural person. But if the same multitude do contract one with another, that the will of one man, or the agreeing wills of the major part of them, shall be received for the will of all; then it becomes one person."[12]

Yet the multitude in itself can be no more than a simple multitude; only in the person of its ruler does it become an entity. Its personality has, apart from the ruler, in and of itself, no existence; for, as Hobbes writes, "That the people is a distinct body from him or them that have the sovereignty over them, is an error. . . . When men say, *the people rebelleth,* it is to be understood of those persons only, and not of the whole nation. And when the people claimeth anything otherwise than by the voice of the sovereign power, it is not the claim of the people, but only of those particular men, that claim in their own persons."[13] But not even in conjunction with the ruler does the people constitute a *real* body, for "a multitude of men are made *one* person, when they are by one man, or one person, represented; so that it be done with the consent of every one of that multitude in particular. For it is the *unity* of the representer, not the *unity* of the represented, that maketh the person *one.* And it is the representer that beareth the person, and but one person: and *unity,* cannot otherwise

[12] *De Cive,* Chap. VI, 1, Note.
[13] *De Corpore Politico,* Part II, Chap. VIII, 9.

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be understood in the multitude."[14] Hence, unity, bodiliness, and personality are qualities that do not pertain to the people in any real sense, but are only feigned of them and are represented by the like qualities in the ruler.

In developing the idea of a covenant of every man with every man in a state of nature as the origin of authority, Hobbes negatived completely the old idea of a compact between the multitude, feignedly acting as a body, and the ruler. According to his conception of the contract, it is "as if every man should say to every man, 'I authorize and give up my right of governing myself, to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner.'"[15] Hence it may be seen that, according to this form of covenant, authority is established by the very formation of society; and no further contract is needed, or is even possible, with the person or persons who are invested with this authority. This is a deduction from the premise that in point of time democracy is always the first form of government, usually followed by aristocracy as the second, and, normally, by monarchy as the last. "In the making of a democracy, there passeth no convenant between the sovereign and any subject. For while the democracy is making, there is no sovereign with whom to contract. For it cannot be imagined, that the multitude should contract with itself, . . . to make itself sovereign; nor that a multitude, considered as one aggregate, can give itself that which before it had not."[16] "To make an aristocracy, there is no more required to the making thereof but putting to the question one by one, the names of such men as it shall consist of, and assenting to their election; and by plurality of vote, to transfer that power which before the people had, to the number of men so named and chosen."[17] "And from this manner of erecting an aristocracy, it is

[14] *Leviathan,* Part I, Chap. XVI.
[15] *Leviathan,* Part II, Chap. XVII.
[16] *De Corpore Politico,* Part II, Chap. II, 2.
[17] *De Corpore Politico,* Part II, Chap. II, 6.

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manifest, that the few, or 'optimates,' have entered into no covenant with any of the particular members of the commonwealth, whereof they are sovereign. . . . Further, it is impossible, that the people, as one body politic, should covenant with the aristocracy or 'optimates,' on whom they intend to transfer their sovereignty. For no sooner is the aristocracy erected, but the democracy is annihilated, and the covenants made unto them void."[18] It will thus be seen that the old conception of a governmental compact was entirely replaced with Hobbes by his idea of a social compact, and that the people can have no rights as against the sovereign. To quote again: "It is most manifest by what hath been said, that in every perfect city . . . there is a supreme power in some one, greater than which cannot by right be conferred by men, or greater than which no mortal can have over himself. But that power, greater than which cannot by men be conveyed on a man, we call *absolute*. For whosoever hath so submitted his will to the will of the city, that he can, unpunished, do anything, make laws, judge controversies, set penalties, make use at his own pleasure of the strength and wealth of men, and all this by right; truly he hath given him the greatest domain which can be granted."[19]

Thus is Hobbes led to his definition of law: "The civil laws are the command of him, whether man or court of men, who is endued with supreme power in the city, concerning the future actions of his subjects."[20] He also says, "Every civil law hath a penalty annexed to it;"[21] whereby he clearly distinguishes it from the laws of nature, divine laws, and international laws.

In the doctrines of Hobbes are contained in express terms the principles of sovereignty and law whose subsequent confirmation and elaboration was so brilliantly begun by Jeremy

[18] *De Corpore Politico*, Part II, Chap. II, 7.
[19] *De Cive*, Chap. IV, 13.
[20] *De Cive*, Chap. XIV, 2.
[21] *De Cive*, Chap. XIV, 8.

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Bentham, and so thoroughly completed by John Austin. In essentials, however, it cannot be maintained that either of these jurists added very much to the political theory of Hobbes. With them, as with Hobbes, there is a complete identification of government, state and sovereign.

Just as the idea of sovereignty developed by Bodin in behalf of monarchical government was seized upon by the Monarchomachen and claimed as a possession of the people at large, so was Hobbes' conception of sovereignty carried over from ruler to people by subsequent writers, among whom may be mentioned Locke and Rousseau, but the latter above all.

John Locke in his "Two Treatises of Government" does not deny the existence of an absolute legislative power in the government, but he holds that there exists in the people a second, absolute power to determine who shall constitute the government. Thus he says: "Though in a constituted commonwealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate; yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them. . . . And thus the community may be said in this respect to be always the supreme power, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved. In all cases while the government subsists, the legislative is the supreme power."[22] This is an expression of Locke's well-known doctrine of revolution. What Locke did not see was that the exercise of such a power as he ascribes to the people was in fact destructive of the existing state.

The difference between state and government that Locke

[22] The Second Treatise of Government, 149, 150.

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had so nearly grasped was finally set forth by Jean Jacques Rousseau. Hobbes' idea of a social compact as the origin of the state was accepted by Rousseau, as was the resulting creation of absolute sovereignty, but with this distinction: whereas Hobbes conceived the substance of this contract to be an agreement of each man with each man to submit in all things to the will of a third person, Rousseau held this contract to be an agreement by each man with each man to submit to the will of all or of the whole. The creation of government became in this way with Rousseau an act separate from the creation of a state, and was not strictly a compact at all but a simple commission; and thus was finally established that most important distinction of state and government.

Hobbes had thought of sovereignty as present only in the government—it was incapable, indeed, of existence elsewhere; even Locke had not denied its possession to a government which was, it is true, liable to deposition for its misuse. Rousseau, on the other hand, positively denies all sovereignty to the government in any sense whatsoever. In fact, the government, according to Rousseau, possesses no power of command at all; it is merely the executive agent ordered by the state to carry out the commands of the state. Consequently, the social compact takes with Rousseau this form: "We, the contracting parties, do jointly and severally submit our persons and abilities, to the supreme direction of the general will of all, and, in a collective body, receive each member into that body, as an indivisible part of the whole." "This act of association accordingly converts the several contracting parties into one civic, collective body, composed of as many members as there are votes in the assembly, which receives also from the same act its unity and existence. This public personage, which is thus formed by the union of all its members, used formerly to be denominated a City, and at present, takes the name of a republic or body politic. It is also called, by

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its several members, a *State,* when it is passive; the *Sovereign,* when it is active."[23]

This is the ultimate effort to turn a multitude of individuals into one body by means of a contract. The body, even in the hands of Rousseau, breaks down into a mere mass of individuals when he attempts to ascribe to it a "general will." This general will is determined quite simply by a majority vote in which each citizen has an equal right of suffrage. To avoid the too evidently mechanical nature of the concept thus arrived at, Rousseau argues as follows: "When a law is proposed in the assembly of the people, they are not precisely demanded whether they severally approve or reject the proposition, but whether it be conformable or not to the general will, which is theirs as a collective body; each person, therefore, in giving his vote declares his opinion on this head, and on counting the votes, the declaration of the general will is inferred from the majority."[24] Now as to whether Rousseau's body of citizens can be logically idealized or whether it is itself a pure fiction, it is evident from the quotation just made that, avoid the term as he will, the general will that he propounds is by his own statement clearly and simply proved a fiction. For either the decision of the greater numerical portion of the sum of particular wills must be a term fully convertible with that of the general will, or else it must be simply *regarded as* the general will through the purely artificial means of a clause in the original social compact. Here, therefore, is a complete, and it would appear final, breakdown in the logical continuity of the attempted creation of a volitional entity through the action of individuals.

During the past century the most important and progressive work in analytical theory has been done by German scholars. To the conception of sovereignty as supreme will little if anything has been added; but in the idea of the state a radical change has been wrought. Indeed, from the

[23] Du contrat social, Book I, Chap. VI, ed. Barber & Southwick.
[24] Op. cit., Book IV, Chap. II.

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most modern point of view, the idea of the "state" was previously non-existent; for the older writers applied this term to the people or to the ruler, or to the two together, but in no instance rose above a thoroughly concrete conception; whereas the state is now conceived as an abstraction, something over and above its physical members. The development of this new theory of the state is a phase of a broad movement toward a new conception of the body corporate.

During the fifteenth and sixteenth centuries German law was almost completely displaced in its own home by Roman law, such at least as had been developed by the Italian commentators. The first half of the nineteenth century, however, saw a reaction quite as severe in favor of Germanism. The elements of German law were to be resurrected, and a new, intensely Germanic system created.

One of the first points of German law to suffer attack was its adopted theory of the *universitas*. Georg Beseler in 1843 declared that by no fiction could the corporate life of bodies such as the German agrarian communities be explained. Since that time writer after writer in Germany has grappled with the problem of the true nature of "bodies" composed of human individuals; and from their united efforts to better old theories a large measure of success has been attained.

With German slowness and thoroughness has been developed, or perhaps it is better to say is being developed, a conception of the corporation as a person not fictitious but real, and possessed of a true will of its own. This person is not a mere collection of individuals bound together by a formal tie of some description, nor is its will merely the summation of particular wills. Personality is a psychical, as well as a physical, quality; the corporation is not simply so much flesh and blood; but it is so much flesh and blood unified by a common purpose. And this, it is claimed, is unity—real, true, undeniable unity—no fiction, no artifice, no contract to be such, no creature of the law! The aggregate of men thus united, it is held, is just as certainly and

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really a person as is the collection of members and qualities which make the human being. It rests, it is true, in part on physical elements. It could not exist, nevertheless, without its psychical elements, for their withdrawal would at once reduce the unity to a mere mass or multitude of units. These psychical elements of purpose and will belong to the corporation, not to its members; for from the addition of private wills nothing can be derived but a sum of private wills. The will of the corporation, however, is something apart from the wills or from any combination of the wills of its individual members.

The application of this doctrine of the corporation to bodies political is seen to be in some sense a reversion to the ideas of the Middle Ages; but, on the other hand, it contains in it the element of *real unity,* the absence of which from the mediæval conception of the corporation turned political thought for centuries into the errors of contractualism. Under this theory of real collective personality the state differs from other corporations only in that its will is supreme.

In the light of the latest theory of the analytical jurists, therefore, the state is a corporate person, an entity analyzable into, but distinct from each of the following elements: (1) Its members, who are collectively the people and individually the citizens or subjects; (2) its supreme will, or sovereignty; (3) its determinate organ for the expression of its will, called the sovereign, which organ, together with all the machinery which it employs for the execution of the supreme will, is included in the government.

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CHAPTER IV.

The State According to International Law.

That conception of sovereignty and of the state which admits the divisibility of the former belongs to what is here denominated the international theory, by reason of its acceptance by so many writers on international law. Although the phrase "semi-sovereignty" is comparatively recent, the idea for which it stands is coeval with the origin of international law. The genesis of the latter, then, it is necessary briefly to review.

With the almost complete disappearance during the fifteenth and sixteenth centuries of the already greatly diminished power of the Holy Roman Empire, the last restraint of external authority was removed from the liberty of the lesser European rulers in the conduct of their relations with one another. Between the character of international intercourse during the Middle Ages and during the subsequent period there is an absolute lack of fundamental likeness. Shadowy as may have been the power of the Emperor actually, he was, in theory, an authority superior to the other lords of Europe so far as concerned the dealings of the latter with one another. When that authority was finally repudiated, the states of Europe stood for the first time in ten centuries openly face to face with each other as powers uncontrolled by the mediation of a common superior. Each was entirely free to act toward its neighbor in accordance with its desire and ability.

It was not to the task of explaining the relations actually subsisting between the nations of Europe, but to that of developing the nature of the relations that should exist, that political philosophers set themselves at this period. With a phenomenal success these writers formulated a system of rules regulating the conduct of states *inter se*, which

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was actually to a great extent adopted, and which, though its specific provisions have often altered, yet does, at the present day, receive universal recognition throughout the civilized world.

Among the first to produce more or less comprehensive treatises upon the subject of international law must be mentioned Ayala and Gentilis. The first to put his work into such shape that it was accessible to others than students, however, was Hugo Grotius, who in 1625 published his famous *De Jure Belli ac Pacis.* The immediate and tremendous influence of this book was due, besides its popular form, on the one hand to the pressing need of relief from conditions then existing, and, on the other hand, to the reasonableness of its proposals, backed as they were by a remarkably erudite appeal to ancient authority, which was always effective to the mediæval and early modern mind, and which was peculiarly appropriate to this subject.

It is to the ancient conception of a law of nature that Grotius turned in order to lay a philosophical foundation for his system. He premises an original condition of mankind in a state of nature, in which, unlike Hobbes, he finds law existing antecedent to any political organization. Although Grotius speaks always of this law of nature as *jus,* he disregards the distinction already drawn by other writers between *jus* and *lex.*[1] Hence, he divides all law into *jus naturale* and *jus voluntarium,* the former of which proceeds from the understanding,[2] the latter from the will.[3] Grotius conceives international law as drawn from both sources, i. e., international law necessarily includes the law of nature, but it may have additional elements added through positive treaty or established custom. It is from the law of nature, however, that Grotius avowedly derives his principles. The law of nature he conceives to be solely the dictate of right reason.[4] From his own reason, therefore,

[1] *De Jure Belli ac Pacis,* I, 1, 9; trans. from ed. Prodier-Fodéré.
[2] Op. cit., I, 1, 19.
[3] Op. cit., 8, 1, 13.
[4] Op. cit., I, 1, 19, 1.

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as that of a normal man, he deduces a number of rights and duties binding upon individuals in the state of nature. Man, however, is naturally and irresistibly impelled to political society.[5] As to whether this impulse is sufficient in itself to account for the existence of political society, or whether there is necessary also an express or implied contract, Grotius appears undetermined. The point is immaterial. Civil society having been established, the natural rights of the individual are suspended, in part at least, by civil law. "It is true that all men have naturally, as we have said above, the right to resist or repulse any injury that one does them. But civil society having been established to maintain order, the state acquires over us and over that which belongs to us, a kind of superior right, in as much as such is necessary to its end. The state may, then, for the sake of the public peace and tranquility, deny this common right of resistance; and it is not to be doubted that it has so willed, since it could not otherwise attain its end."[6]

Although the natural rights of the individuals within the political community have thus been subordinated to another law, yet in the whole community of which the individuals are members there still inhere all the rights and duties decreed by the law of nature. Like individuals, these communities are possessed by natural law of rights and duties of both peace and war; and although the right of private war is extinguished, there yet remains the right of public war, which Grotius defines as that made by the authority of a "civil power."[7]

While it may be doubted whether international law would have attained a positive influence upon the actions of states without this original claim of its transcendental validity, it is quite certain that this claim is now plainly denied. Pufendorf, Wolff, Vattel, and their contemporaries treated international law as derived from the law of nature, a view

[5] Op. cit., Proleg., VI.
[6] Op. cit., I, iv, 2, 1.
[7] Op. cit., I, iii, 1, 1.

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in which even such late writers as Phillimore[8] and Bluntschli[9] have concurred.

Since the middle of the eighteenth century, when Moser declared the rules of international law to be derived solely from the customs and conventions of nations, no other sources have been generally acknowledged, however influential "right reason" may yet be in the determination of those customs or conventions.

The transcendental origin of international law being denied, the question next arises whether or not so-called international law is strictly speaking law at all. This question, however, is not of serious import; the likeness and unlikeness of international law to municipal law is quite generally agreed upon. International law has in common with municipal law the nature of a rule of conduct, but it lacks the latter's characteristic of imposition under an express sanction by a political superior. It is immaterial whether the term "law" shall embrace only that which possesses both elements or shall be extended sufficiently to include that which has but the one. Usage may here be conveniently permitted to decide the question, and the phrase "international law" is of practically universal currency. Lawrence says: "International law may be defined as the rules which determine the conduct of the general body of civilized states in their dealings with one another."[10] So Bonfils holds: "Le droit international public (ou Droit des gens) est l'ensemble des règles qui déterminent les droits et les devoirs respectifs des Etats dans leurs mutuelles relations."[11] Or as Calvo calls it: "En d'autres termes, l'ensemble des obligations mutuelles des Etats, c'est-à-dire des devoirs qu'ils ont à remplir et des droits qu'ils ont à défendre les uns à l'égard des autres."[12]

These definitions serve also to indicate the nature of the "subjects" or "persons" of international law, or as Rivier

[8] International Law, I, p. 15.
[9] *Völkerrecht*, 1.
[10] Principles of International Law, p. 1.
[11] Droit international public, p. 2.
[12] Droit international, p. 93.

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says, of "states, nations, peoples, powers," for "these words are synonymous."[13]

The older writers failed to define these persons. Thus Grotius writes: "The state is a perfect union of free men associated for the protection of law and for the common good."[14] This vagueness has since given way, however, so that there are now a great number of scientific definitions of the state by international publicists.

These definitions vary considerably. That of Bonfils is: "L'Etat (au point de vue du Droit international public) est une réunion permanente et indépendante d'hommes, propriétaires d'un certain territoire, associés sous une autorité commune, organisée dans le but d'assurer à tous et à chacun l'exercice de sa liberté et la jouissance de ses droits."[15] Lawrence says: "A political community, the members of which are bound together by the tie of common subjection to some central authority, whose commands the bulk of them habitually obey;"[16] Rivier, "Une communauté indépendante, organisée d'une manière permanente sur un territoire;"[17] Phillimore, "For all the purposes of international law a state (*dēmos, civitas, volk*) may be defined to be a people permanently occupying a fixed territory (*certam sedem*), bound together by common laws, habits, and customs into one body politic, exercising through the medium of an organized government independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace, and of entering into all international relations with the other communities of the globe."[18]

Through the variation of these definitions certain elements stand out as essential to the state in the general opinion of international jurists. These elements are government, independence, sovereignty, territory and people.

[13] Principles du droit des gens, I, 3.
[14] Op. cit., I, i, 14, 1.
[15] Op. cit., p. 83.
[16] Op. cit., p. 56.
[17] Op. cit., p. 45.
[18] International Law, 3d ed., I, 81.

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The government is the representative and agent of the state for the exercise of its rights and powers of sovereignty and independence.

Between independence and sovereignty international lawyers make but an indifferent distinction. One or both are generally recognized as essential elements of the state. The position taken by Grotius in recognition of the final dissolution of the Holy Roman Empire was that a sovereign state should be independent. When Grotius had declared that rights and duties pertain to certain groups of men in the dealings of such groups with one another, it became necessary for him to determine the nature of the subjects or holders of such rights. Accordingly he says: "A civil power" [i. e., a state] is "that authority which has the sovereign power,"[19] and "that power is sovereign whose acts are independent of the volition of another, in such a way that they may not be annulled by any other human will."[20]

The Holy Roman Emperor had stood at the head of a hierarchy that was organized on a territorial basis. With the repudiation of his authority, all that territory that had possessed a certain unity under the Empire was disintegrated. It was divided up into many lands, and each was henceforth under a separate supreme authority. But the whole complicated tissue of contract that had bound individuals together step by step from peasant to Emperor had weakened with the decay of the Empire itself. The rights of many lords over lands were as shadowy as those of the Emperor. It was by no means always, therefore, that the authority of those who had under the old system stood next below the Emperor was acknowledged when his overlordship was finally denied. Hence it was necessary for Grotius to determine in which of these lords lay an authority that should cause the community under him to be properly recognized as the bearer of the rights and duties of nations. Such, accordingly, he declared to be only those that were possessed of sovereignty.

[19] Op. cit., I, iii, 5, 7.
[20] Op. cit., I, iii, 7, 1.

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The authority of these lords had, however, been attained under the feudal system, wherein it was attached to a certain domain in lands. The principles of territorial sovereignty—the absolute sovereignty of the state over every inch of its territory to the absolute exclusion of the sovereignty of any other state—seems a natural conception in modern thought. Such was far from being the case, however, with the ancestors of those European peoples who created the system of international law. The political ideas of the Germanic tribes that overran the Roman Empire appear to have comprehended only the conception of tribal or personal sovereignty. These tribes were nomadic, and they naturally did not attach any political significance to their usually temporary occupation of land. They were under the sovereignty of their tribe whether within the territory momentarily held by that tribe or not, and were everywhere governed by its laws. On the other hand, the mere fact that others dwelt within that land did not render them subject to the laws of that tribe. Even after these tribes had acquired permanent abodes in western Europe they appear for a long time to have regarded themselves as merely encamped on the lands that they occupied. These lands, however, were apportioned by the higher chiefs to lesser leaders for their enjoyment and government, with the stipulation of certain service in return. Thus there was a contract. He to whom the land was originally allotted did not acquire an absolute property therein, but only certain rights guaranteed by his superior in return for the fulfillment of certain duties; he in turn might transfer some portion of these rights to men holding similarly of him, and so on indefinitely. Even the chiefs who made the original grant seem to have claimed no complete ownership of the lands either in themselves or in their tribes, but only to have asserted rights in it. The idea of the universal and eternal dominion of the Roman Empire appears to have laid such fast hold upon the minds of the barbarians that even after they had conquered vast lands from that Empire they seem to have been ever satisfied with the recognition

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in themselves of certain rights. The circumstance that these rights in land attached to the rulers and leaders of the people led gradually to a complete identification of political rights with relations to land—the so-called process of feudalization.

With the decline of feudalism great lords who had stood in a double relation of rights and duties, on the one side to those holding lands of them, on the other to those of whom they held lands, often found the latter relation become purely nominal. Their rights were not efficiently protected nor their duties successfully demanded. Since, then, the lands over which they ruled were subject in practice to the exercise of no rights save those that proceeded from these rulers themselves, to the latter it became easy to ascribe absolute proprietorship. This conception was readily accepted by the founders of international law, for it was entirely compatible with the doctrine of *dominium* in the old Roman system of *jus gentium,* from which has been derived the greater number of the principles of modern international law. This independent possession of land was therefore adopted into international law as essential to him in whom was recognized sovereign power.

Sovereignty is thus conceived as inseparably connected with the possession of a fixed territory. So fundamental, indeed, is regarded the principle of territorial sovereignty in international law that at the present day it is deemed necessary to explain any exception to it as a fiction. No community is recognized in international law as a state that has not fixed and permanent territory. Thus Rivier says: "Le territoire est un élément essential de l'Etat. . . . Il est impossible, d'après la définition même de l'Etat, de concevoir un Etat dépourvu de territoire."[21]

As a consequence of the emphasis placed by international law on the element of territory in the state, the body of individuals subject to the state received but scant attention. So far has the international conception of a "people" travelled

[21] Op. cit., pp. 155–6.

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from the old Germanic one of a "clan" or "tribe" that it signifies but little more than the population of the territory of the state. Tentative theories of unity in the people of a state of another nature than residence in a common country have not been widely accepted. The theory of nationality or race, supported by many Italians following Mancini, receives but slight credit. "The postulate is fundamental that jurisdiction and territory are co-extensive."[22] All persons within the territory of the state are subject to the sovereignty of the state, and that sovereignty does not follow them into the territory of another state. It is true that, in return for their allegiance to a particular country, that country may undertake to secure their protection when abroad, but no exercise of sovereignty by their own country over them in another country is recognized by international law.

Writers on international law are apparently under a little difficulty in reconciling their conception of territorial sovereignty with certain activities of the state. All the powers of the state are not confined in their exercise to its territory. Its powers are exercised both internally and externally. Accordingly, some writers speak of internal and external sovereignty. Others make the same distinction when they speak of sovereignty and independence.[23] Other writers, again, make no distinction between these terms. Moore says, "The words 'sovereignty' and 'independence' are often used by writers on international law as practically synonymous terms."[24] So Rivier says, "L'indépendance de l'Etat est sa souveraineté même, envisagée de l'extérieur."[25] Nor, indeed, do those who contrast external sovereignty with internal sovereignty, or independence with sovereignty, regard these two as distinct things, but only as two aspects of the same thing. Lawrence writes, "This right of independent action is the natural result of sover-

[22] Taylor, International Public Law, p. 197.
[23] Bonfils, op. cit., p. 164. Wheaton, Elements of International Law, 20–21, ed. Dana.
[24] Digest of International Law, p. 18.
[25] Op. cit., p. 280.

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eignty—it is, in fact, sovereignty looked at from the point of view of other nations."[26] Bonfils says, "Comme le remarque M. Pradier-Fodéré, les expressions employées s'appliquent aux aspects divers d'un même attribut."[27] It may be concluded, therefore, that there is no general distinction between the conceptions of independence and sovereignty in the international theory.

Sovereignty or independence is defined, as regards its substance, either as composed of powers or of rights. As has been seen from the foregoing, Wheaton speaks of it as "the supreme power by which any state is governed." Lawrence, on the other hand, says, "Independence may be defined as the right of a state to manage all its affairs," etc.[28] Rivier writes, "Qui dit souverain, dit indépendant. . . . On peut définit le droit d'indépendance," etc.[29] As far as can be seen, there is no intention on the part of these writers to draw a distinction between the "powers" and the "rights" of a state. The terms are used synonymously in all essentials at least.

The international theory of sovereignty, then, is that it is a number of rights or powers. As Maine puts it: "The powers of sovereigns are a bundle or collection of powers, and they may be separated one from another."[30] Hence, it is possible to conceive of a division of these powers or rights, of a deprivation of one state by another of the exercise of one or more of them. Grotius explicitly recognized the possibility of such a situation[31] inconsistently, it may be remarked, as he had already declared sovereignty indivisible.[32] The designation "halb-souverän" was applied by Moser to states that have been deprived of some of their sovereign rights, and has been widely adopted, though often with an apparent lack of content.

[26] Op. cit., p. 111.
[27] Op. cit., p. 135.
[28] Op. cit., p. 111.
[29] Op. cit., p. 280.
[30] International Law, p. 58.
[31] Op. cit., I, iii, 21, 10 and 11.
[32] Op. cit., I, iii, 17, 1.

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The validity of the conception for which the phrase stands, however, is completely asserted by the international school. Thus Rivier writes: "L'utilité, la necessité même a fait admettre l'existence d'une souveraineté imparfaite, à laquelle on a donné le nom, nullement irréprochable, de mi-souveraineté."[88]

[88] Op. cit., p. 80, and also Lawrence, op. cit., p. 67.

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CHAPTER V.

Criticism of the Constitutional Theory.

The starting point of analytical theory has always been the municipal law. It is the law of the land that is its absorbing topic—the law made by an authority commonly recognized in the community as the highest objective source of obligatory rules of conduct. Bodin was chiefly concerned with the obedience due by subjects to the commands of their kings. The English jurists, with a rather broader viewpoint, extended a like inquiry to all forms of government, and the scientists of today have drawn their conception of the state largely from their legal studies upon the nature of the corporation. Always it is the law that comes from within the group, from within the community, of which some phase under investigation leads to a development of the analytical theory of sovereignty.

Sovereignty is sometimes spoken of by analytical writers as the one essential element of the state. It is obvious that this cannot be taken literally, for these same writers themselves recognize the necessary existence of other attributes in the state. Yet it is true that so great is the importance attached by them to the sovereignty of the state that sovereignty and state have, in one instance at least, been conceived as synonymous terms.[1] Sovereignty, these writers say, is supreme will—legally supreme will, that is—and this legal supremacy is the one characteristic of the will of the state. In this lies a grave error, for will means purpose, and purpose may be manifested in other forms than of commands. Thus, the "will" of the state is broader than the "sovereignty" of the state, for legal supremacy

[1] Professor Burgess, Political Science and Constitutional Law.

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is but one phase or direction of the will of the state, and, as the sovereign, the state is viewed in but one of its aspects.

The analytical school is fully agreed that sovereignty is will and nothing but will. If that will express law only, then it is exerted solely in abstract commands. An abstract command can be addressed to no other than a rational creature. It follows that sovereignty cannot be exercised over irrational beings nor over inanimate matter, for example, over land. Yet to assert that the state exerts no will toward its territory is absurd.

Moreover, even a manifestation of the will of the state is not always law to all to whom its desires may be directed. Law depends for its character not solely upon its source, but as well in part upon the persons to whom it is addressed. The command of the state is law only to its subjects. Now, no matter how one may care to define this term "subject" in its legal sense, it will hardly be contended that Great Britain, for instance, comes within the category of "subjects" of our own country. Yet it will not be denied that in the Venezuelan affair, and in the continued maintenance of the Monroe doctrine, the United States has exhibited no doubtful manifestation of its will toward Great Britain.

The command of the state even to its own subjects is not always law. The mandate of the United States concerning interstate extradition, incorporated as it is in the Constitution, is yet lacking the character of law because there is no provision for its enforcement. Yet that the command is an utterance of the will of the state will scarcely be disputed.

It is apparent, therefore, that sovereignty is not synonymous with the will of the state, but is narrower in its significance. It is also apparent that the state itself is something more than merely the sovereign, something more than merely the source of law.

Several assertions have thus far been made involving the nature of law. It has been said that law is expressed in abstract commands, that it issues from a definite organ of the state, that it is addressed to the subjects of the state, and that it contains a provision for the enforcement of its

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commands. It is necessary, then, to set forth plainly what is meant by the term "law."

A law may be defined as a specific command or rule of conduct enunciated by a definite organ of the state for the government of its subjects, whose obedience is required and sanctioned by a provision for the employment of the force of the state to secure its execution or to punish its breach.

The analytical concepts, as they have already been set forth, are state, sovereignty, government, and body politic. Sovereignty is a supreme legal will; the state is its real possessor; the government is its organ; and the body politic its subject.

The body of the state, or the people as it is conveniently termed, is composed of a number of individual human beings viewed from a legal standpoint, viz., as subject to the legal will of the state. These individuals may in many respects be a mere aggregate, an inarticulate horde. But in one aspect they must possess oneness; as an element of the state they must constitute a legally organized unit.

The personality of the state differs from that of the human being in that its body is discrete and not concrete. The body of the state consists of the spatially disconnected bodies of its individual members. On the contrary, however, the legal will of the state contains no portion of the sum of the individual wills. The latter do not, either in their entireties or in their like parts, participate in the sovereignty. It may actually be the will of the individual to perform the action required of him by the state or to govern his body in accordance with its commands; yet the will of the individual thereby only abets the sovereign will and does not share in its functioning. The legal will of the state may be conditioned by the wills of the subjects of the state, but it is not composed of their wills.

Sovereignty, as regards its location, is therefore not to be found in the individual members of the body politic. Modern authors who hold the organic theory of the state do indeed contend for the existence of a corporate will which rests in the members of the community as one whole.

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Admitting, if one chooses, the validity of this theory, it yet does not affect the conception of sovereignty as the supreme legal will of the state; for law is that which issues from a definite organ of the state, and commands of this origin would at best but approach the dictates of the general will, and even in the event of their absolute coincidence legal character would be acquired only through their acceptance by this organ of the state and not through a general volition. A general will, if such exists, might, like the individual wills, condition but not constitute sovereignty.

The supreme legal will of the state must, however, have a physical habitation, which is found in a separate organ of the state called the government. Thus to constitute the state a legal person there is required this third attribute—an *organ* of will which, however, in the individual is not localized apart from his own body.

It is one of the functions of the government, then, to determine the legal will of the state. In this it may be guided by any motives whatever. The self-interest of officials, expediency, the fear of violence either external or internal, even force actually applied, may influence the decision of the sovereign organ. The government may accept some principle of conduct already formulated, as, for example, a law of a conquered foe, or a mercantile custom, or a rule of international law; or, on the other hand, it may evolve some idea out of its own consciousness. In this sense the source of law is immaterial. It is not the origin of its content, but the origin of its form, that is of essential consequence. It is the formal validity which can be given only by the sovereign organ of the state.

For whatever reasons and by whatever means determined, the conduct demanded of its subjects by the state requires publication in order that the legal will of the state may be known. For, since this will and the body of the state are physically discrete, as pointed out above, this will cannot be communicated to the body politic in the same way as the human will is communicated to its body, that is to say, through some unexplained correlation of the psychical and

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physical within the human brain. Sovereignty can be exercised, therefore, only in publicly announced commands.

The state may will actions as diversely numerous as does the human being. It does not, as a rule, however, govern by specific or occasional commands. Since, as has been shown, the organic communication of volitional impulse from the governmental to the people is an impossibility, the will of the state and its body cannot have that direct and immediate intimacy that exists in the case of the individual human being. Constant and instant communication is not possible. Hence, the legal will of the state usually exerts itself in more stable commands, which fall into the form of durable rules of conduct.

A law is always addressed to subjects of the state. It is a command laid on those whose obedience is required. The exertion of the will of the state toward an enemy and toward a subject is in the former case a demand for compliance, and in the latter case a command for obedience. A simple command of the state to its subjects, however, is not law. On the other hand, laws are distinguished from simple commands addressed by a state to its subjects in that they receive a peculiar sanction. Every law is accompanied by a provision for physical coercion by the force of the state. It must be clearly recognized that a legal sanction contains no atom of physical force, but only a threat of its use. Force may or may not be applied in fulfillment of the sanction. The law may be obeyed voluntarily, or, if broken, the one offending may or may not be punished. Force is, therefore, no essential element of law. It is on this point that exception has been taken by German scholars to the Austinian theory, for, as they have expressed it, a rule of conduct cannot then be absolutely determined to be a law until it has been enforced. It is true that Austin's school have laid such emphasis upon the idea of force as to make it an essential attribute of law, yet at the same time they inconsistently maintain that supreme lawmaking power is sovereignty, and that sovereignty is will alone and comprises no particle of physical

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power. The sanction of law is not force, but simply the threat of force.

While, therefore, force is not an attribute of *law,* the possession or control of force is an essential element of the state. Only a person with the capacity of force is capable of uttering law, for a command for the exercise of force which is non-existent is a mere *flatus voci.* The analytical school has been correct in denying to force, to mere physical power, any place among the characteristics of sovereignty, but it has erred in failing to recognize it as an essential element of the state.

In the foregoing discussion of the nature of law, use has been made of a number of terms of which the signification has been but loosely indicated. These terms are "state," "government," "body politic" or "subjects," and "the force of the state." Since these terms are all of essential consequence to the definition of law, only by the full development of their respective meanings can that definition itself be completed.

All of these legal concepts—of the state as sovereign, of sovereignty as supreme legal will, of government as the organ of sovereignty, of the people as the subject of sovereignty—are mutually dependent.

The nature of the force of the state, it appears from the foregoing discussion, is thus of importance. As to the quality of this force, it is first of all the natural powers of individuals who acquiesce in the will of the state and of other individuals coerced by them into executing that will; and, secondly, of mechanical or other energy capable of producing a corporeal effect, of attaining a substantial end or purpose; and, thirdly, possibly, of voluntary aid from other states,—in short, any physical power actually subservient to the will of the state.

As to the degree or amount of this power, it may be said that the force of the state needs be essentially only such as does actually suffice to secure execution of some part of its will by some portion of its subjects, despite objection from any quarter whatsoever. But it must be remembered

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that although an ideal state may be imagined in which obedience to the will of the state is absolute without the possession by the state of any force whatever, yet some force, however slight, must exist, else the will of the state were not sovereign.

The force of the state, then, may be of so slender a proportion under certain imaginable circumstances that it may simply be said to exist. It is at all times a widely fluctuating power. Even at the same point of time the force that the state is able to bring to the enforcement of its will in one direction may vary considerably from that which the state is able to command in another. It may, indeed, in certain cases, be unable to secure compliance with that will; the subjects may resist a specific exercise of sovereignty with such success that the law may have to be repealed or the attempt at its enforcement abandoned. Or, the will of the state may be effectually nullified as to a part of its subjects by open rebellion or by the intervention of foreign powers. So long, however, as it retains its effective force, the state continues to exist.

It is evident, however, that just as the state possesses a physical organ of will, so it must possess an organ of force. Its force must be possessed in a sense differing from that in which the physical powers of its people may be said to be in its possession. The powers inherent in the subjects of the state can be said to belong to the state only in a negative way, i. e., they are the state's only to restrict. The state institutes for its people certain spheres of restraint in action, and thereby creates corresponding spheres of liberty. Actions are, thus, to the people, prohibited or permitted. The same individuals, however, who, as members of the people, are subject merely to restraint, may also have positive actions commanded them by the state. In executing actions so commanded they act not as subjects but as part of the state's organ of force. Hence, just as the faculties of the state have been found to be both volitional and physical, so the government is conceived as the organ both of force and of will. It is by no

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means necessary that these organs be identical. On the other hand, the two distinct functions must be clearly discriminated in the government.

The organ of sovereignty, strictly speaking, is solely the supreme formal source of authority for the organ of force, that is, the highest formal source of the commands in accordance with which force is exerted. This organ, however, may delegate its powers or permit administrative discretion, whereby it constitutes the recipient of such delegation its agent in the exercise of sovereignty. Such agents are properly considered a part of the sovereign organ, and when they have an executive function also the two organs are embodied in the same individuals.

It has been stated that a law is a command to the subject of the state. The question then arises as to who are subjects of the state,—as to what is the criterion by which the status of particular individuals as subjects is determined. Obviously, no person is a subject over whom the state does not claim sovereignty, whether in word or act. But is anything further necessary to make an individual subject? It must be answered that the claim by the state alone is sufficient. The state may extend its sovereignty over any rational being it chooses. If it be objected that this makes sovereignty a purely formal matter, it can only be replied that law is itself purely formal. The absolutism of the legal will is formal only and not real. The will of the state is supreme in point of law; but in point of content it is conditioned to such an extent as to be practically determined by innumerable causes, such as public opinion domestic and foreign, the forces at its disposal and those against it.

The idea that sovereignty is in the nature of things limited to the territory of the state, and is there exclusive, is utterly at variance with the analytical conception of sovereignty as supreme legal will. Territory, as irrational matter, is not subject to sovereignty; it does not enter as an element into sovereignty nor into the state as the sovereign.

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Territory is therefore incapable of imposing any necessary limitation upon the exercise of sovereignty. Sovereignty is purely and simply personal. It is exercised toward persons only, and may be exercised toward them without regard to their physical location. Geographical boundaries may, indeed, be of the greatest aid in defining those persons over whom the state claims sovereignty, but it thus acts as a limitation only by the choice of the state and not by way of inherent necessity. The limitation of its sovereignty to its own territory may appeal to the state as advisable in order to preserve amicable relations with other nations, but such limitation is not inevitable. Indeed, all the great states of the world today exercise sovereignty outside of their respective territories and acquiesce in the exercise of alien sovereignty within them. Our own country, for example, has laws obligatory upon its subjects living abroad, and, on the other hand, utters no law to the heads or representatives of foreign governments who are within our territory. This latter practice is spoken of as the "fiction of extraterritoriality." There is, however, no need of a fiction to explain a situation perfectly logical according to this theory. Sovereignty is not intrinsically, but only conventionally inseparable from the soil.

It is not at all illogical, moreover, that an individual should at any one time be the subject of more than one state. All aliens within this country, over whom their parent government still claims sovereignty, are at the same time subjects of the United States. So, also, the inhabitants of those South American countries that had won their freedom from Spain in the last century, and had thus become new states, remained during nearly twenty years subjects of Spain before that country relinquished its claim to sovereignty over them. During our Civil War, also, the inhabitants of the Southern States were constantly under two sovereignties. Although every state, by its claim alone, is thus potentially sovereign over all the inhabitants of the earth, yet each, as a matter of policy and practice, finds it

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advisable to restrict the exercise of its sovereignty to a community over which, through the general adoption of such abnegation by other states, its sovereignty is ordinarily almost exclusive.

The discussion of the various elements of the state as the source of law thus arrives at the definition of the state as an abstract person embracing an organ possessed of force obedient to an organ of will legally supreme over an aggregate of human beings.

It is true that the assertion of force as an essential element of the state is a formal innovation in the analytical theory, but that it is more than the formal recognition of an element inherent in that theory is denied. The location of that power in an organ of the state is evidently a logical necessity. It is maintained, therefore, that the analytical theory has been here accurately set out.

The analytical school, it will be seen, has failed to analyze exhaustively the activities of the state. From the definition of law that has just been elaborated it is abundantly clear that the point made in the beginning of this chapter was justified, in which the designation of sovereignty was refused to those purposes which a state may manifest toward land, or toward another state, or toward its own subjects without the addition of its sanction. Sovereignty and the will of the state are not identical. On the contrary, sovereignty is but the expression in one direction of a will that is capable of volition in other directions.

A state may, of course, if it chooses, declare all the members of another state its subjects, formulate its will toward them as law, and even treat them as rebels in case of resistance. This is not the practice, however, even in the case of open hostilities. The will of the state remains non-legal in form. If the former course should be adopted, the state would then be no longer dealing with another state. In all interstate transactions, therefore, the will of the state is extralegal, that is, the state does not exercise sovereignty. Since the whole analytical theory rests on the hypothesis

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that every act of the state is an act of sovereignty, that theory is logically excluded from the domain of international relations.

This limitation of the sphere of the analytical theory is conclusive without the necessity of pointing out that the exercise of force by the state is also a non-sovereign act, according to that theory, for which it furnishes no explanation.

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CHAPTER VI.

Criticism of the International Theory.

In commencing a critical consideration of the international theory one point of contrast between it and the analytical theory immediately presents itself. The analytical theory is properly concerned only with principles that are essential to the very existence of political society. In any possible form or manifestation of public control the conceptions attained by this theory will inevitably be found. Consequently, the analytical concepts must be regarded as of universal validity, that is, as present wherever political phenomena occur.

The international theory, on the contrary, takes cognizance largely of elements that are admitted to be of occasional and accidental occurrence. It was, indeed, at one time asserted that the principles of international law are unalterable even by the Divine Will, but this transcendental conception has been replaced by that of a humanly determined set of customary and conventional rules. Nor are these rules longer considered as necessarily binding on all political communities. Many of the writers on international law appear to deny the title of "political" to all communities not subject to it, but it is now generally recognized that only a limited number of political communities are persons at international law, and that there are other political communities which are not such.

The so-called family of nations may be likened to a club for any common social purpose. Its members must be of a definite order of beings. Just as a social club is composed only of human beings, the family of nations is composed only of political entities. Neither organization, however, includes all the species that belong to the respective orders of its members; certain further, more special characteristics

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are necessary in each case. The club may limit its membership by restrictions of sex, age, color, etc., and the family of nations, its personnel by requirements of civilization, size, territory, stability, etc. The membership of each is further limited by the necessity of a desire on the part of one who has all the necessary qualifications to participate in the functions of the society, and by the necessity of a willingness on the part of those already members to receive that one. In short, however much the pressure of circumstances may render its existence expedient, the family of nations is an association, purely voluntary on both sides, of certain political communities, and its membership is arbitrary and in no sense determined upon any immutable principle.

Just as the membership of the family of nations is self-fixed, so are the rules by which the relations of its members with one another are determined, nor is it necessary that these rules should impose the same relations between all members. Consequently, the status of one member may be different from that of another, and the very characters of these conditions are necessarily of an alterable, and not of a rigid or necessary quality.

Since, then, the family of nations is self-chosen and self-regulated, the only principles connected with it that are permanent and unalterable are those that are essential to the nature of its members as political communities. Hence it is impossible to develop other concepts which shall be inherent in the very existence of international intercourse. No conception of the attributes of the parties to that intercourse other than of those involved in the nature of the political community itself, no conception of the character of the relations existing between those parties, no conception of various categories or of variety of status into which they may be cast, can have other than a relative validity. International law is an actual, but not a necessary, fact, and it comprises real, but not inherent, principles.

It follows that a theory of international law that seeks to explain relations that exist between certain political communities must comprehend concepts over and above those

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vital to such bodies. It has, in erecting a complete idea of the subjects, or persons, of international law, to deal with (1) elements that are universal and immutable, and (2) elements that are accidental and contingent. The former of these, the elements fundamental to the political community, are inalterable in any manner. No change of time or place can affect them. No action or convention by the entire family of nations can make that a nation which has them not. The second class of elements, on the other hand, are always liable to amendment through the actions of the parties to international law.

It is necessary, therefore, in considering the international theory, to separate those elements that are perpetual from those that are merely temporary. Those elements that are permanent have been said to constitute the essential conception of the political community. When to these are added certain other arbitrary elements there is created the subject or person of international law. This latter conception will be here spoken of only as the "nation," a term employed by international writers as a synonym for the "state." The political community, then, may be said to be the order, and the nation the species. The objection to the latter term on account of its ethnological significance is evident, yet the use of it in this sense is believed also justifiable, especially in view of the common acceptation of the terms "family of nations," and of "international law" or "law of nations." Independence and sovereignty are likewise used as alternative terms by writers on international law. Independence alone, however, will be used here in order to avoid as far as possible the adoption of the terms already employed to denote concepts of the analytical theory.

This use of terms accepted, it is now necessary to learn which of the elements of the central concept of the international theory are essentially involved in the nature of the political community and which are superadded to erect the more specific concept of the nation. These elements, original and superadded, are government, independence, territory, and people.

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A government, in the international theory, is the holder of the rights and powers of the nation.

Independence (including all that is generally termed sovereignty in the international theory) is composed of a number of rights and powers. The alternation among international writers between the use of the words "rights" and "powers" is apparently deemed perfectly consistent, and yet it is the source of some uncertainty. If the use of the terms is consistent, then the word "powers" is clearly excluded from the realm of the physical and concrete. The international theory asserts the possibility of dividing these rights or powers in such a way that either (1) their exercise may be suspended or (2) their exercise may be transferred. If by "powers" is meant bodily or material strength, force and energy—in short, the *might* of the nation—then those powers are incapable of division in such a way that their innate capacity for exertion toward certain ends can be destroyed without the annihilation of the powers themselves. A subjective faculty is not thus limitable. If, for example, by the "power to make treaties" is meant the possession of the physical faculties essential for the accomplishment of one party's share in that act, then it is impossible that that power shall be destroyed in reference to some nations without being destroyed in reference to all. In this sense a nation could not possess the power of treating only with one other nation. Thus the Transvaal, before the late war with Great Britain, could not have exercised its power of treating with the Orange Free State if the deprivation of that power toward other nations had signified an actual loss of the inherent capacity for treating. Nor will the distinction drawn by some writers between the possession and the exercise of the powers of independence render admissible the conception of these powers as physical. The exercise and the possession of such powers cannot be so differentiated that their exercise can be transferred to another nation without the transfer of their possession as well, and since the latter cannot be partially effected, it follows that no more can the exer-

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cise of these powers be divided. It is thus clear that in the international theory the term "powers" is consistently used only in the abstract sense of "rights." The two terms are fully convertible.

The enjoyment of certain definite rights, then, by the nation has been erected into a standard that is called "independence." Any nation that enjoys all these rights is termed independent. This is the whole meaning of the term "independence" as used in the international theory. It refers to no absolute freedom of any kind whatsoever. It is not perfect liberty to do either what the nation wills or what the nation can do. Each member of the family of nations owes its rights to the others, for those rights are the results of contracts express or implied to which the others are parties. In the ordinary, absolute sense of the word there is no political community that is truly independent. Certainly all within the range of international law are dependent in this sense. The very possession of a fixed territory, in so much at least as it is something more than bare physical possession, is dependent upon the assent of other nations to the recognition of its boundaries. To that comparative condition in which nations are least dependent, however, in which they are by international law most free to exert physical powers, is technically attached the term "independence."

Since independence, then, denotes not a complete absence of dependence, but only a certain least degree of dependence, it is entirely logical to recognize degrees of independence or rather of dependence. There may be dependent as well as independent nations; that is, there may be nations that enjoy but a part of the rights of independence ("semi-sovereign states," so-called). Since independence is a mere bundle of rights, its reduction is perfectly conceivable. The deprivation of the right to do a certain thing takes from the nation neither the possession nor the exercise of will or power to do that thing. The diminution of the rights of independence is logically possible, since it implies no impairment of an indestructible unity.

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The contention of the international writers that their concept of dependence ("semi-sovereignty") is philosophical, is therefore clearly justified. Since, however, independence is conceived to consist only of rights, and since these rights are those which are contracted within or recognized by the family of nations, it follows that other political communities may not, and actually do not, enjoy these rights in the same way. Political communities, not members of the family of nations, may indeed have rights and duties imposed upon them by international law, but they are of themselves incapable of contracting such rights and duties. The right of contracting with other nations is essential to international personality and to the acquisition of the rights of independence. Hence independence is to be regarded as an attribute of the international unit alone and not of all political communities.

Although independence consists only of rights, it is to be observed that these rights of independence either lie to the exercise or to the exemption from exercise of the power or will of the nation in accordance with specific limitations, or else lie to the exercise or the restraint from exercise of the power or will of other nations likewise agreeable to specific regulations. Both the rights and the duties of a nation necessitate the possession of physical force and will. Hence, although the rights and powers of independence are not themselves concrete, physical powers, yet the predication of such physical powers in their subjects is unavoidable. The international theory, therefore, like the analytical theory, fails to give formal recognition to the idea of force. The international theory fails entirely, also, to place emphasis on the idea of will as a constituent of its concept. Rights alone, and neither power nor will, are actually represented by a distinct concept in the international theory. Of the natures of the will and force of the nation the international theory offers no explanation.

The nation is thus conceived in the international theory as the possessor of certain rights constituting independence. This independence, however, is territorial; its possession is

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connected with the possession of a fixed territory. The element of a fixed and permanent territory is essential to the idea of the nation, yet it may be clearly inferred that modern supporters of the international theory agree that a territory is not necessary.

Indeed, unless political character is to be denied to practically all those small and inferior communities that take little or no part in the international life of the world, territory is indisputably no essential of that character, for few of these communities have permanent and definitely fixed possessions in lands, though perhaps some such example may be cited, as, for instance, Afghanistan. Whatever may be the comparative lack of importance of all nomadic communities, their relatively low civilization, and the absence among them of many social and individual characteristics found among the peoples of the family of nations, such communities ancient and modern, which exhibit the phenomenon of public authority, cannot be philosophically denied a political nature. The little known tribes of the centres of Africa and Asia may play an insignificant role in the political life of the world, but they are none the less political entities. They are not included in the sphere of international law, and hence are not nations, but it is entirely conceivable that there might be a society of nomadic communities regulated by a system much like modern international law. International law arbitrarily conditions its enjoyment upon the possession of a territory, but that condition is not an inherent necessity. It must be concluded, therefore, that territory is another occasional element that is found in the nation without being found in all political communities.

Although unity of various kinds has been ascribed in the international theory to the people of the nation, the only unity generally recognized in the people is that of a common habitation within a certain domain which itself possesses a kind of unity through incorporation into the territory of a single nation. It is to be observed, however, that this can only be a short explanation for a situation that

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involves a further analysis. The jurisdiction of the nation extends over its territory. If, then, all persons upon that territory are members of the people, it is because the fact of membership relates back through the territory of the nation to the exercise of the jurisdiction of the nation. The extent of the territory of the nation is the measure of its jurisdiction, but is not the ultimate criterion of the people.

A fiction may afford a practical rule of conduct, but it cannot constitute a philosophical explanation of a given phenomenon. If, then, the international theory seeks to present, not the arbitrary principles asserted by international law, but their philosophical basis, it must look beneath the subterfuge by which extraterritorial jurisdiction is reconciled with the principle that jurisdiction is coextensive with territory. As a practical expedient of international law, no argument is made here against the fiction of extraterritoriality. It is only as involved in a philosophical conception that it is objected to. Its application leads to such anomalous situations as that of the Oregon country during its joint occupation by the United States and Great Britain. "It has been held that, during the period of joint occupation, the country, as to British subjects therein, was British soil, and subject to the jurisdiction of the King of Great Britain; that, as to citizens of the United States, it was American soil, and subject to the jurisdiction of the United States" (*McKay v. Campbell,* 2 Sawyer, 118).[1] Such a situation is obviously based on a fiction, and since philosophy deals with truth and not with fiction, it must recognize that a nation has a right of jurisdiction over persons and not over territory, however useful and well-nigh perfect a guide its territory may be in the determination of what persons are subject to its jurisdiction.

The people, therefore, according to the international concept, is that body of individuals who are subject to the nation's right of jurisdiction. This right attaches only to

[1] Moore's Digest of International Law, Vol. III, p. 277.

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the exercise of force whose superiority over certain individuals as against any force actually opposed to it is regarded by the family of nations as established. Thus no rigid standard is erected. Minor interruptions to the absolute superiority of the force of the nation over its people, even when of long continuance, as in the case of successful brigandage, are disregarded. Even open revolt has to assume certain proportions before it receives recognition. What extent or what duration of opposition to the force of the nation interrupts its jurisdiction in regard to certain individuals is dependent upon the discretion of all the nations. When such a stage is reached the right of jurisdiction *pro tanto* is transferred to the opponent by the simple process of recognizing in him a corresponding right to territory.

An element in every concept of the international theory is thus seen to be a right or rights. The nation is the possessor of rights; independence consists of rights; territory comprises a right; the people are subjects by right; and the government exercises rights. When, therefore, the idea of rights is abstracted from the concepts of the international theory, they dissolve. These rights have been seen, however, not to be essential to the political community. Hence, with the idea of rights included, these concepts cannot make up the fundamental concept of the political community. The validity of the international theory is necessarily limited, therefore, to the sphere of international law.

Breaking down now the concepts of the international theory into their elements, and eliminating those that have been shown to belong only to the nation, there remain as necessarily inherent in the idea of the political community the ideas of a ruling organization, of a will and of a force in it, and of a number of persons over whom this will and force are exercised. These ideas of the essential nature of the political community are fully in consonance with those that are accepted in the analytical theory for its concept of the state. Hence it may be concluded that the two theories are perfectly compatible.

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It has been shown that a state is not also necessarily a nation. The question arises, then, whether the nation is necessarily a state. It may be asked, in the first place, if, the attributes of the nation having been shown not to be necessary to the state, they may attach to other than political entities. This query hardly requires a formal answer, for all the concepts of the international theory are concerned with groups of men organized for the exercise of public authority, and so conform to the definition of the political nature.

An inquiry of far greater significance is whether the nation is solely that supreme political body which is the state, or whether the nation need include only a subordinate political unit. To put the matter in another form, does the nation necessarily include within itself a sovereign will?

In answering this question it must be noted that many of the rights and duties of independence are susceptible of application to the conduct of subordinate political bodies or even of non-political bodies and individuals. Such rights and duties are, however, as to non-political units, simply *imposed,* and hence are not essentially of like character with the rights and duties of nations, which, it has been seen, are *contracted.* Now it is not an uncommon practice for a subordinate, that is, non-sovereign, political unit, to have treaty-making rights; it may thus possess rights and duties through a contract to which it is a party. It has just been shown, however, that a subordinate government acting in an unofficial, i. e., non-political character, cannot acquire the rights and duties of a nation; but in its official, or political, character, it exists solely as an agent of a sovereign organ. All the political acts of a subordinate government, therefore, are those of an agent, and the principal to the contract is a state. Hence it must be concluded that the nation, or subject of international law, is always a state, as that concept is defined in the analytical theory.

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CHAPTER VII.

Conclusions.

The preceding discussion of the two great political theories, in which is found asserted, in the one the indivisibility of sovereignty, in the other its divisibility, leads to the conclusion that the two theories are entirely congruous, in spite of their use of the same terms with different signification.

The applicability of the principles of each theory is confined to a distinct sphere. The analytical theory determines the nature of the internal organization of the state, of its municipal, including its constitutional, law; the international theory explains the nature of the mutual relations of states, the nature of international law. The analytical theory with its "sovereignty" and kindred concepts affords no explanation of international law, nor the international theory with its "independence" any explanation of constitutional law.

It is, of course, a fact that principles of international law have by statute been adopted into municipal law, and are thus in very large part to be found in the municipal law of most of the various nations; that is, applied in their municipal courts. The fact that the same principle is recognized by the nation both by way of international law and of constitutional law does not merge the two distinct natures of that principle in its separate capacities. The nation may enact into law a rule of conduct taken from any source it may choose, but it cannot thereby alter its own essential nature. To illustrate, international law recognizes a specific territory as belonging to a nation; that nation may or may not, as it sees fit, erect that international possession into constitutional possession, for the possession of land is inconsequential in the analytical theory. On the other hand, international law

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recognizes certain individuals as subjects of the nation, but, even if the definition by international law of "subject" be adopted into the municipal law, that adoption is incapable of operating to change the nature of the "subject" of municipal law, for that is immutably fixed.

Thus it is plainly necessary to keep distinct the concepts of each theory, and there are a number of minor concepts the significance of which for the one theory or the other, for international or constitutional law, or for both, it is essential to determine.

The subjects of a state have been defined as those over whom sovereignty is exercised; the subjects of the nation, as those over whom lies a right of jurisdiction. Since states do not in practice attempt to enforce their sovereignty where their right of jurisdiction does not extend, this divergence is not a pregnant source of confusion. There are actually, however, both in constitutional law and in international law, certain recognized classes of subjects. The principle of division is allegiance. Allegiance is a duty imposed by the state upon a subject to support it loyally against all its enemies. In constitutional law allegiance divides the subjects of the state into citizens and alien subjects, and in international law, into nationals and alien subjects.

Each state fixes entirely for itself the special rights and duties of its citizens, as also the manner of acquisition of its citizenship. In general, all persons born within the territory of the state are held to its allegiance, although there are exceptions to this rule which at times cause the condition of "double allegiance." The greatest reason of the latter situation, however, is naturalization, which is the imposition of allegiance upon aliens born. As a correlative to the exercise of its power of naturalization the state usually recognizes the doctrine of expatriation, by which its own citizens are permitted under certain conditions to absolve themselves from its allegiance. In cases then where the circumstances of naturalization are those under which the state of prior allegiance recognizes the

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right of expatriation, there is no question of the status of the individual; where, on the other hand, the circumstances are not such as permit expatriation, the effect of naturalization is to make the individual a citizen of two states. There is in this double citizenship no anomaly for municipal law; the law of each state is sufficient unto itself.

In international law, on the contrary, when the practice of naturalization by one state is not in conformity with the right of expatriation acknowledged by another, there is recognized the allegiance only to the one or to the other. Hence, the citizens of a state are not always recognized as such in international law. It is convenient, therefore, to style nationals those individuals to whose allegiance the right of the nation is admitted by international law.

Within the territory of the independent nation its rights over its own nationals are almost unlimited. Over alien subjects, on the contrary, while it alone usually exercises jurisidiction, there are certain rights over them that must be observed in the nation to which their allegiance is due. These rights are to require their proper protection and to make laws of a certain class for them. In the case of so-called double nationality, national character is really lacking in the individual, and the rights and duties to which he is held are but similar to those of allegiance.

Finally, it is necessary to treat of the classification of nations. The fact has already been developed that independence is simply a collection of rights generally possessed by nations. It has not a fixed and permanent content, but varies with many factors, and chiefly with the intensity of the common desire for international order. Every general limitation upon the exercise of the powers of the nations has the necessarily coincident effect of erecting a sphere within which their powers may be exercised without interference. The establishment of order is at the same time the creation of liberty. It may be asserted, then, that independence is increasing at the present time among nations.

No two of the nations, however, possess the rights of independence in precisely like degree. The only equality

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among nations is that they all possess an equal subjectivity or personality at international law; all are entities capable of contracting or repudiating their rights and obligations. Thus, even at a given time, independence must be considered as a variable quantity. The greatest of nations may, for example, possess its territory subject to certain servitudes which lesser nations escape, as for instance, innocent navigation of a territorial channel.

There is, therefore, no absolute line that can be drawn between independence and dependence; nor, for similar reasons, between degrees of dependence. The best that can be done by way of classification of the nations is the recognition of certain modes of employment of the rights of independence, or of the deprivation of certain prominent rights, which mark a noticeably peculiar status at international law.

The best line of demarcation of classes among nations is that of the responsibility of a common agent in the exercise of rights over the entire territory of the nation. Where a nation exercises rights, if at all, through its own exclusive agents, or through an agent who, though common to another nation, is yet responsible to itself for the exercise of its rights, or where the rights exercised by its common agents extend to only a portion of its territory, the nation is commonly called independent; where, on the contrary, a common agent exercises one or more of the rights of a nation as to its whole territory, without responsibility to it, the nation is said to be dependent. Among independent nations, it is seen, there may be distinguished three groups: (1) those that exercise all the rights of independence that they possess through their own agents; (2) those that have rights exercised by agents responsible to themselves in common with other nations; and (3) those that have rights exercised as to a portion of their territory by agents who, within the limits of their office, are not directly responsible to themselves.

The bare relinquishment or deprivation of certain of the rights of independence is not regarded as a material im-

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pairment of that attribute. Two categories of independent nations in this situation are recognized. One of these consists of neutralized states, which do not possess the right of offensive warfare; and the other comprises tributary states, which are under an obligation to pay a tax to another nation. With this group may also be placed nations which enjoy rights not generally possessed by independent nations and hence not necessary to the conception of independence. These are guaranteed states.

The employment of a common agent, responsible to each of the several nations, constitutes an alliance or union. Such is the personal union in which two or more nations have a common ruler through accident or coincidence. The real union or confederation is a form in which the employment of a common agent is the result of treaty. In both the personal union and the real union or confederation the rights exercised by the common agent include always a part at least of the rights of treating with other nations. Many unions of states through which are established commissions of one kind or another are not classified in international law, owing to their temporary character or to the relative unimportance of the rights exercised by the agent.

The third class of independent nations consists of those, one or more of whose rights are exercised as to a portion of their territory by an agent not responsible to themselves. Such are the nations subject to the exercise within definite areas of their territories of foreign consular jurisdiction over aliens of the consuls' nationality. Such also are the nations portions of whose territories are administered by a common agent not responsible to themselves. Territory thus held is known partly as leased territory and partly as vassal territory. The nation that possesses the right of territory is the suzerain state; the nation to which the common agent is responsible is the lessee or administering state.

A dependent nation is one that has an agent not directly responsible to itself in common with some other nation for the exercise of one or more of its rights of independence as to its entire territory. Of this class is the protected

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state, which differs from the guaranteed state in that in return for protection it relinquishes some portion of its independence to the exercise of a common agent. An administered state is unlike the protected state in that the rights exercised by the common agent in the former include those concerned purely with internal administration.

These classifications are all those provided by international law for the status of its subjects. They are all based on relations to territory. There are, however, lands which are not incorporated in the territory of any nation, and yet over which are recognized other rights, less than that of territory. The lowest form of an interest in lands is known as a sphere of influence. It is the result of an agreement by which the signatory nations agree that one of them shall have the exclusive right of acquiring possession of certain unappropriated lands. This sort of an interest is hardly international in character. When, however, certain rights in such lands have actually been claimed and recognized by the family of nations, without, however, a claim of territory, these lands are erected into a protectorate.

There are two other concepts of international law that require definition. A belligerent community, though granted certain rights for the purposes of war, is not a subject of international law, but possesses those rights solely by conferment and not by contract. The effect at international law of the recognition of a belligerent community is to erect it into a government *de facto*. A government *de facto sed non de jure* is one in which are recognized certain temporary rights of government in derogation of the rights of another state, which are thereby temporarily suspended. Military occupation constitutes the lands occupied a part of the territory of the occupying nation until their final possession is determined.

Although the federal state is usually treated as a concept of international law, it is really one of constitutional law, and signifies a form of government in which subordinate political communities have a peculiar autonomy but in which the supreme decision of competency rests in a central organ.

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(1789-1848)

BY

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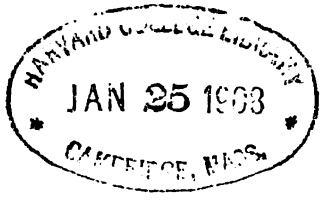

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PREFACE.

As a colony, Maryland was governed, upon the whole, with justice and intelligence. Its people prospered so well that, when they finally determined to break their long allegiance to the Lords Proprietors, they did so chiefly in support of an abstract principle from the perversion of which they themselves had not greatly suffered. In breaking allegiance, however, it was not necessary to effect a complete change in governmental institutions. Many features of the proprietary administration were such as could be continued with little modification. Such, however, was not the case with the fiscal practices of the deposed government. These had savored too much of landlordism to be acceptable to the revolted democracy, and were speedily discarded. The substituted measures were hastily and, for the most part, badly conceived. They reflected the chaos and perplexity of a period of war, and, in great degree, passed away with that period; but not entirely so. There is a definite line of continuity in the financial history of Maryland after 1776.

The present monograph takes up the subject at that point, and continues it as far as 1848. This latter date is somewhat arbitrarily chosen; but it corresponds roughly with an actual and important change in financial administration. It marks, as well as a single year can mark, the transition from the early period of financial experiment to the more stable system of the present day. The first chapter—covering the years of independent statehood from 1776 to 1789—is little more than an outline, scarcity of material combining with a complexity of subject matter to render a more thorough study impracticable. Thereafter, the treatment is more detailed, particular emphasis being laid upon the development and culmination of the "Internal Improve-

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ment Movement." This interesting movement, although primarily economic in its inception, eventually developed into the most important problem of public finance that had ever confronted the state. Bankruptcy and repudiation were long imminent; and, although the state finally emerged from its difficulties with its honor reasonably clean, it was only after a struggle, the effects of which are still traceable in the books of the treasury.

Such a study as is here attempted is of necessity largely one of origins and of historic concern. Otherwise, indeed, its chief instruction would seem to be a negative one. It affords an example—and Maryland is but one of many examples—of the fortuitous and aimless manner in which the finances of our state governments were long conducted. Laws and usages affecting matters of public finance are notoriously difficult of alteration. As a result, the governments of today are hampered by the errors and omissions of the past. Age gives a prescriptive title to a practice or law, the reason of whose existence, if it ever had a sufficient reason, is long since forgotten. By exposing the origins of such laws and practices, historical study may, at times, render a distinct service to the present.

The sources of information have been mainly documentary: *The Laws of Maryland;* the *Journals of the Proceedings of the Senate and of the House of Delegates;* the various reports, etc., annually collected after 1825 under the title of *"The Public Documents,"* and the contemporary periodicals. Other sources made use of have been duly mentioned in the footnotes. The only secondary source used to any considerable extent is the monograph entitled *"Sketch of Taxation in Maryland,"* contained in the *Report of the Maryland Tax Commission* (*Baltimore, 1888*).

For valuable personal assistance, acknowledgment is made to Professor J. H. Hollander and Associate Professor G. E. Barnett.

The author desires also to make acknowledgment of assistance received from the Carnegie Institution of Washington in the preparation of this study.

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CHAPTER I.

Outline of the Finances During the Revolution (1775–1789).

In the histories of the American Revolution the activities of the several state governments are usually ignored. This omission, it is true, is not without reason. The Continental Congress was the accredited agent of the states; it was intrusted with the general direction of military operations, it raised supplies of men and money; and the success or failure of the war depended primarily upon the wisdom of its decisions. In matters of finance, particularly, Congress was left to its own devices. The states gave but half-hearted response to the requisitions of Congress, and, by issuing paper money in large amount, helped greatly to depreciate the value of such money and thus, indirectly, to interfere with one of the most important of the few fiscal devices within the power of Congress. Nevertheless, the state governments had important functions to perform, and had to contend with financial problems of no mean magnitude. Not only were they forced at times to carry on military operations practically upon their own initiative, but the indirect expenses of the war were numerous and large. Nor did their difficulties cease with the war. Seven years of constant warfare had almost exhausted the resources of the country; and state and nation were saddled with burdensome debts. The years necessary for recuperation and for adjustment to new conditions were years of anxiety. The manner in which the State of Maryland conducted its financial affairs during this period, if not wholly commendable, is at least not discreditable.

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The Financiering of the Revolution.

The first Provincial Convention in Maryland, meeting in June, 1774, although composed of regularly elected delegates of the people, was intended simply as a means of protest against the alleged wrongs of the mother-country. This extralegal body, however, was continued in existence, and gradually assumed, in fact by its nature was forced to assume, broad powers of administration and legislation. But it was not until the middle of 1776 that the old Proprietary Government was formally abolished by the departure of Governor Eden, and the idea of independence definitely accepted. In these intervening two years there really existed two governments within the state. But the authority of the Proprietary Government in all matters of administrative routine was fully acknowledged, even by the Convention itself, which not only recognized the officers of that government, but even went so far as to offer to assist them in the collection of the regular taxes.[1]

The Convention, however, although thus modest in its claims to power, began at an early date to make preparation for the forcible defense of its demands. Thereupon, the Convention was immediately confronted with the financial problem. The attempt to raise money by voluntary contributions met with little success, although non-contributors were penalized by ostracism and, in some cases, by maltreatment.[2] In this extremity it was but natural that the issue of paper money should be resorted to as a tentative measure. To levy taxes would be an undue stretching of the Convention's authority, and, moreover, would bring it into direct conflict with the Proprietary Government. The same objections would apply to the floating of a loan, if, indeed, such a possibility suggested itself. Bills of credit, however, had then as now a peculiarly insidious power of worming

[1] Silver, The Provisional Government of Maryland, p. 32. Proceedings of the Convention of the Province of Maryland, p. 115.

[2] Maryland Archives; Journal of the Maryland Convention, p. 16. Cf. Proceedings of the Convention of the Province of Maryland, pp. 9, 13.

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themselves into circulation; and their issue was supported by the precedents set by the Proprietary Government and by the Continental Congress. This paper-money policy was formally begun in August, 1775, when the Convention authorized an issue of bills of credit to the amount of $266,666.66⅔.[3] Redemption was solemnly promised in the name of the people of the state. But this was a mere beginning. To carry on a government in time of war was costly, and hardly had the presses struck off this issue when another batch of $535,111⅓ was ordered, out of which, however, the former issue was to be redeemed.[4] The war was now well on and its seriousness and the likelihood of its long continuance were understood. Within a twelvemonth the Convention duplicated its last issue of paper notes,[5] declared Maryland a free and independent state, and made provision for a formal constitution and a regular machinery of government.

The first General Assembly, meeting in February, 1777, found large and growing military expenditures, an appreciable floating debt, incurred by the late Conventions, no regular sources of revenue, and a circulating medium, saturated with a million odd dollars' worth of state bills of credit and with a far greater amount of continental paper. In the forming of a financial policy, the Assembly, as has been noticed, had to begin practically afresh. The revenue of the Proprietary Government had been derived mainly from port duties, poll-taxes and the system of quit-rents. Poll-taxes and quit-rents were out of harmony with the new democratic principles, and port duties could be of little importance so long as the enemy should hold the control of the seas. Thus, a few license charges—those upon marriages, keepers of ordinaries and peddlers—together with a few fees and the fines and forfeitures which accrued as an incident to the judicial system, were the only sources

[3] Maryland Archives; Journal of the Maryland Convention, pp. 24–25.

[4] January, 1776. Proceedings of the Convention of the Province of Maryland, p. 87.

[5] Idem, p. 366.

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of revenue which could be accepted by the new government as legacies from the old. These sources were continued,[6] in some cases without formal re-enactment; otherwise, there was, during the whole period of the war, little inclination shown to derive revenue from indirect methods of taxation. A short-lived tax upon billiard-tables[7] was the only new license charge imposed. A tax of 1 per cent. upon sales at auction was levied in 1780,[8] but was repealed within a year;[9] and duties upon imports and exports, although numerous and heavy, were of little effect, owing to the stagnation of foreign trade.

The financial expedients upon which the government of Maryland placed its chief reliance during the years of the war were: (1) The general property tax; (2) the issue of certificates of debt; (3) the confiscation of British property. These will be briefly considered.

General Property Tax.

The financial measure most favored and first adopted by the Assembly was the levy of a tax upon real and personal property. Such a tax was unfamiliar to the people. Even a land tax had been resorted to only once during the whole history of the Proprietary Government.[10] But, in the reaction against indirect and personal taxation, the apparent justice of the property tax strongly commended it to the people; and the principle that each citizen should contribute to the public treasury in proportion to his wealth in property was made a fundamental article of Maryland's Declaration of Rights. In the excitement of war, however, it was no easy matter to put such a tax into operation. In the first place, lack of experience would render the framing of an efficient law extremely difficult; and, secondly, the assessment and collection of such a tax required an elaborate machinery, which would be difficult to construct. As a

[6] Md. Laws, 1780 (June), ch. 8.
[7] Idem, 1780 (June), ch. 8.
[8] Idem, 1780 (October), ch. 30.
[9] Idem, 1781 (May), ch. 8.
[10] During the French and Indian Wars.

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result, the new tax laws developed many weaknesses from the first. The assessments were badly made, and levied with great inequity between persons and places. Nevertheless, the general property tax was continued until after the close of the war, and formed, while it lasted, the most important, and only dependable, source of revenue.

So far as the state finances are concerned this early use of the property tax is complete in itself. It was discarded in 1786; and, when again restored nearly fifty years later, it was of a radically different character. But the methods of assessment and collection developed in the earlier acts are interesting for purposes of comparison with the later acts; and they are important, moreover, as embodying the basic features of the assessment system used by the local governments in this intervening half-century.

From 1777 to 1786 an assessment act was an annual, sometimes a semi-annual, occurrence. Not in all cases, however, was a new general assessment provided. In some years the previous assessment was retained with only such changes as were necessitated by the addition of new property or the abatement of old. Each of these acts was, in a sense, an improvement upon the previous one, but the essential features of the several acts are very similar. This is especially true as regards the machinery of assessment. In each case a board, known as the commissioners of the tax, was named for each county, with general supervisory power over the enforcement of the tax laws within its jurisdiction. This board appointed assessors of property for the county, sometimes according to the ancient division of the state into hundreds, sometimes according to specially constructed assessment districts. The assessors reported to the board of commissioners, who then acted as a court of appeal, listening to complaints and increasing or decreasing the assessors' valuation at its discretion. The act of 1788 transferred the final authority of review to a special court of appeal for each county and for Baltimore Town; but a few years later these special courts were abolished, and the appellate jurisdiction in matters of the tax was revested in

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the county commissioners. For the collection of the tax, the board was authorized to appoint some suitable person—the sheriff of the county being usually the first choice—who was directed to appoint deputy collectors for each hundred or district. The distinctive feature of this whole system of administration was its centralization. The commissioners of the tax were appointed by and were responsible to the state government, and the subordinate officers of assessment were of similar character.

The endeavor to render the tax upon real property equitable as between localities was responsible for most of the changes in the successive acts. The first act, that of 1777,[11] allowed the assessor to accept the sworn statement of the owner as the true valuation of his property, merely providing penalties for evasion or false statement. This system led to marked irregularities. Thereupon, valuation by personal oath was discontinued;[12] and, to guide the assessors in estimating the value of land, the law provided that no land should be valued at less than 7s. 6d., nor for more than £4.[13] The wide discretion still given the assessor caused this crude measure to have little effect. Not until the last act of the series, that of 1785,[14] was any comprehensive plan for equalization devised. By this new plan an average value for the land of each county was fixed by law, the average varying from 33s. 6d. per acre for Kent County to 15s. 9d. per acre for Caroline. This average value per acre was then multiplied by the number of acres in order to give the taxable basis of the county. The actual levy of the tax was made as before upon real and personal property according to the selling value thereof. Such a scheme as this was complex and difficult to apply; and the fixing of average land values was necessarily arbitrary. Nevertheless, the act was calculated to accomplish its purposes, which were, first, the rough equalization of the burden

[11] Md. Laws, 1777 (February), ch. 21.
[12] Idem, 1781 (November), ch. 4.
[13] Idem, 1777 (October), ch. 14.
[14] Idem, 1785, ch. 53.

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of the tax among the counties, and, second, the prevention of the steady decline in the valuation of property within the state as returned by the assessors.

The assessment of personal property was for the most part left to the discretion of individual opinion. The owner returned an account thereof, under penalty; and the assessor valued it at what he thought it to be worth. In a few cases, however, rules were laid down for the guidance of the assessor. Thus, the values at which slaves were to be everywhere assessed were detailed in a table, the amounts varying according to age, sex, etc. Similarly, silver plate was assigned a fixed taxable value of 8s. 4d. per ounce; and, for a time, bar and pig iron were given specific values per ton. Intangible wealth was as yet of no great importance, consisting principally of various sorts of debts and of interests in land. The general rule was that debtors should be allowed to deduct from the interest due their creditors the amount of the tax on the principal of the debt.[15] Tenants paying taxes could deduct the amount of the taxes from their rent.[16] Ground-rents in towns were assessed to the lessor, the value thereof being determined by capitalizing the rent at 8 per cent.; and, in the same way, the value of rented houses in towns was ascertained by capitalizing the rents at 16 per cent.[17] In the early acts the attempt was made, but with little success apparently, to complete the property tax by an income tax upon annuitants and upon persons holding public offices and profits; and, in all the acts, single males of a certain age were required to pay a fixed tax of 15s., when they did not pay taxes upon a minimum amount of property.

Exemption from taxation was extended to the property of the United States, the State of Maryland, and parish schools, all provisions (except livestock) necessary for consumption for the year, tools of mechanics and manufacturers actually employed, ready money, and wearing apparel. Also,

[15] Md. Laws, 1777 (February), ch. 22; 1781 (November), ch. 4.
[16] Idem, 1781, ch. 4.
[17] Idem, 1785, ch. 53.

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any person not possessing property valued at more than £10 was deemed a pauper, and, therefore, not a subject for taxation.[18]

The rate of the first tax levy in 1777 was 10s. per £100 of property. By 1780 it had risen to £25. After that it declined, until in 1785 it was 7s. 6d. These figures are not significant. The apparently confiscatory character of a rate of 25 per cent. is explained by the fact that the tax was payable in a greatly depreciated currency, whereas the assessment was upon a specie basis. Estimating the greatest depreciation to have been in the ratio of 40 paper to 1 specie dollar, the tax of £25 would have been but slightly over ⅝ of 1 per cent. in specie. The difficulty of the treasury at the time was complicated by the fact that the annual assessments of property steadily declined. In 1780 the total property value returned for taxation was £15,889,079; by 1782 this had been reduced to £11,747,493;[19] and in 1786 it was only about £10,000,000.[20]

Bills of Credit and Certificates of Debt.

The great depreciation in the bills of credit put forth by the state conventions and by the Continental Congress showed the weakness of such issues secured simply upon a pledge of faith. The attempt to maintain such bills at par by declaring them a legal tender proved futile from the beginning; and, in 1780, this provision was repealed.[21] With this experience before their eyes, and at the solicitation of Congress, the General Assembly for some three years refused to countenance any further paper-money proposals. An empty treasury, however, in time forced the abandonment of this attitude. But, in again sanctioning the emission of paper bills, the Assembly endeavored to provide against the evils of the earlier issues, the most important departure from the earlier practice being the establishment

[18] Md. Laws, 1781, ch. 4.
[19] Proceedings of House of Delegates, 1782 (November), p. 12.
[20] Idem, 1785 (November), p. 85.
[21] Md. Laws, 1780 (June), ch. 28.

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of redemption funds of undoubted adequacy. These funds were obtained either by setting aside definite amounts of confiscated British property or by the levy of special taxes. The bills were made receivable for treasury payments; and, as a rule, bills once received by the state were permanently retired.[22] The total value of the new bills emitted was relatively small; and, of the three issues authorized, only two were at the state's own initiative. These were: by act of June, 1780,[23] £30,000, known as "Black Money," and by act of May, 1781, £200,000, known as "Red Money."[24] The other issue was merely in fulfilment of an act of Congress, by which it was arranged to retire the greatly depreciated continental paper.[25] Under this arrangement each state was directed to provide for the retirement of its assigned quota of the old emission; and, in substitution, a new issue limited to one twentieth of the face value of the old was authorized. Of the new bills, the state was to receive six tenths for its own use. The quota assigned Maryland for retirement was $20,540,000. This would allow the issue of about $1,000,000 worth of new tenor bills, but up to April, 1782, only £98,070[26] of this amount had been put forth. These bills, known as "Continental State Money," were secured upon a redemption fund provided by the state, and differed from the regular state issues in that they bore interest.

Not only did the new state bills depreciate, but the Assembly anticipated such depreciation, and provided that, at intervals, the commissioners of the tax should publish the rates at which the bills would be received in payment of taxes. This led to much confusion, the commissioners in one county fixing the rate as low as 2 to 1, and those of another county at 5 to 1. Finally, the Assembly itself enacted the depreciation rates at which bills should be re-

[22] Md. Laws, 1781 (May), ch. 36.
[23] Idem, 1780 (June), ch. 24.
[24] Idem, 1781 (May), ch. 23.
[25] Idem, 1780 (June), ch. 8.
[26] Idem, 1782, ch. 50.

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ceived.[27] By October, 1780, the old Convention money, as well as the early continental issues, had so fallen in value that the state fixed a date after which they should not pass current. In the mean time, however, they could be exchanged for bills of the new issue at the ratio of 40 to 1.[28]

The comparatively little use made of bills of credit by the state was due primarily to the fact that "certificates of debt" were found to be a more feasible means of coining the public credit. These certificates, although issued in a variety of forms, were simply interest-bearing treasury notes.[29] The several emissions differed widely in details; but the essential features were: annual interest at 6 per cent., payment at specified dates or at the close of the war, redemption secured by some particular fund, and receivability for taxes and certain other forms of public dues. Except that they bore interest, they differed but little from the later issues of state bills, and were quite analogous to the "Continental State Money." Originally, however, they were not intended as a currency; and the earlier issues were of no lower denomination than £20.[30] But later the denominations were reduced; and, as the state was lax in paying the promised interest, the certificates of debt depreciated, and became identified apparently with bills of credit in ordinary transactions. These certificates were issued in profusion and for almost every kind of treasury payment, being indeed the usual means of meeting a treasury deficit. Each issue required legislative sanction, and the purpose was specified. But so long as the purpose was respected no limit was placed upon the amount the treasurer might issue. Sometimes these certificates were for direct advances of specie or supplies;[31] but the major portion emitted was forced upon various state creditors in lieu of actual money.

[27] Md. Laws, 1780 (October), ch. 48; 1781 (May), ch. 24.
[28] Idem, 1780 (October), ch. 5.
[29] Cf. Md. Laws, 1778 (March), ch. 16; 1779 (November), ch. 38; 1781 (May), ch. 5; 1782 (November), ch. 25.
[30] Md. Laws, 1778 (March), ch. 16.
[31] Cf. Md. Laws, 1780 (October), ch. 51; 1780 (June), ch. 2.

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Confiscated British Property.

After long meditation, the Assembly in the fall of 1780 determined upon the confiscation, with some exceptions, of all property within the state belonging to British subjects.[32] The value of the property seized under this act is difficult of computation, but £500,000 specie value would probably be a conservative estimate.[33] Unfortunately for the treasury, however, most of this property was in the form of land, and, in the depression of war times, not readily convertible into money. All of it was offered for sale. But investment seekers with ready money were not plentiful, and only a fraction was sold outright. The far larger portion was disposed of on credit, the purchaser being required usually to give a well-secured bond for the payment of annual interest on his debt and of the principal within a specified term of years. Final settlement was consequently not effected, in most cases, until long after the war had ceased. Thus, the confiscation of British property was of small direct benefit to the state at the time of greatest need; but indirectly it served a good purpose as a convenient fund for the security of bills of credit and of certificates of debt.

These three measures—the general property tax, the issue of bills and certificates and the confiscation of British property—embody practically the whole of the revenue legislation of Maryland during the Revolution. A solitary effort to borrow money abroad met with little success. The special commissioner of the state, Matthew Ridley, was successful, indeed, in negotiating a loan of £40,500 with the Messieurs van Stophorst of Holland in 1782;[34] but the Legislature, believing the terms disadvantageous, annulled the contract, and directed the commissioner to refund the

[32] Bond. State Government in Maryland, p. 71. Proceedings of the House and Senate, April and May, 1780.

[33] Proceedings of the House of Delegates, 1781 (November), p. 36; 1782 (November), p. 75; 1783 (November), p. 39; 1785 (November), Report of Committee on the Proceedings of the Commissioners of Confiscated Property, p. 88.

[34] Proceedings of the House of Delegates, 1792 (November), p. 99. Cf. McSherry, History of Maryland.

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money already obtained by him. The final settlement of the matter, however, was not effected for many years.

It is not necessary to enter into the details of the expenditures during this period. Excluding the administrative expenses of the government, they were almost entirely for military purposes, ceased at the close of the war, and left no permanent impress on the character of the appropriations. Besides the cost of supporting its own military force, Maryland was called upon, of course, to bear its portion of the expenditures of the Continental Congress. The requisitions made for this purpose upon the state, however, were paid with little promptness. At the final casting up of accounts between the several states on the one hand and Congress on the other, Maryland was found to be among the six "debtor" states, *i. e.*, among those which had paid less than their proportionate share of the general expenses of the central government. Congress refunded the differences due to the creditor states; but Maryland, along with the other debtor states, never paid the balance which it owed.

Treasury Confusion After the War.

The close of the Revolution found the state treasury depleted, and, what proved equally serious, thoroughly disorganized. This disorganization was due in part to the difficulty inherent in the attempt to do business with several forms of circulating medium, and in part to the insufficient treasury staff. It was no mean task to keep books balanced or to render them intelligible when the accounts entered were sometimes in specie, more often in certificates of debt and bills of credit, and not infrequently in actual commodities—tobacco, wheat, pork, etc. To keep track of the continual variations in the rates of depreciation, of which each bill and certificate had its own, was a labor in itself. As it was, the Legislature, in its efforts toward economy, had undervalued the need of an efficient clerical staff; and the small force of officials provided was unable to cope with the accumulating work thrust upon it. Moreover, the sheriffs, county clerks and others entrusted with the collec-

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tion of the public revenues had become excessively lax in making returns to the treasury. Heavy penalties were enacted against such negligent officials, but the laws were seldom enforced. Under the plea of industrial distress, hundreds of appeals were made to the Legislature for release from debts or for the benefit of insolvency acts. Indulgence was readily granted, to the confusion of the finances,[35] and to the encouragement of inefficiency and fraud. The existing distress of industry, however, must not be underestimated. The war had drained the resources of the people to the utmost; and time was required to restore commerce to a normal condition. Recuperation, moreover, was seriously hampered by the confusion in the circulating medium. People could not raise money to pay their debts. The property tax had become so difficult of collection that the annual produce was less than its annual arrears, and in 1785 it was discontinued. As a partial offset, there was a rapid increase in the receipts from port duties following upon the close of the war. These jumped from almost nothing in 1782 to £33,093 in 1786.[36] But, notwithstanding the addition of this important item, the revenues of the treasury were insufficient to meet the ordinary governmental expenditures plus the interest on the state debt.

In the presence of this confusion the Legislature seemed helpless. No new taxes were imposed. The treasury drifted along without definite policies, paying ready money when it could, and, when it could not, issuing more certificates. The state debt was the matter of most immediate concern; and, for its payment, the Legislature did make half-hearted provision. This debt, as has been noted, consisted of bills of credit, certificates of debt and, less important, the unsettled Van Stophorst loan. Bills of credit had been reduced by the steady process of receipt and cancellation by the treasury to the sum of $186,275;[37] and the redemption of this small remainder gave no cause for worry. Certificates of debt, however, had increased rapidly, and

[35] Md. Laws, 1786, ch. 21, ch. 51; 1787 (November), ch. 29.
[36] Proceedings of the House of Delegates, 1786, p. 40.
[37] Md. Laws, 1784, ch. 55.

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were still being issued. In the absence of funds wherewith to redeem this indebtedness, the obvious course was to reduce the ill-assorted mass of debt to some form of harmony. This the Legislature attempted in an act whose title explains its purpose: "An act to establish funds to secure the payment of the state debt within six years, and for the punctual paying of the annual interest thereon."[88] By this act the old system of pledging a separate security for each form of obligation was done away with, as far as was consistent with earlier promises; and a general fund was established by throwing into one all the proceeds from the sale of confiscated British property, debts due the state on bonds, and arrearages of taxes accruing before 1783. This fund was pledged for the payment of all forms of the state debt on or before January 1, 1790, and for the punctual payment of an annual interest of 6 per cent. in the mean time. The act was based upon the belief that the debts due the state were sufficient, when paid, to meet all the state's obligations. No provision, however, was made against the possibility of insufficiency except for that portion of the debt not maturing until after 1790. For this object a tax of 2s. 6d. per £100 of real and personal property was levied.

The "funding law" of 1784 accomplished little. State debtors were slow in settling with the treasurer, and the Legislature, as a rule, was willing to give further indulgence. The sinking fund tax of 2s. 6d. was collected with great irregularity and with a heavy expense to the state.[89] As a result, no appreciable fund was accumulated with which to redeem the debt in 1790. But, by a less direct means, the same purpose was accomplished. This came about through the receipt and cancellation of certificates by the treasury, as had been the case with bills of credit. Up to 1785 the issue of new certificates annually exceeded the cancellation of those received; but, thereafter, the conditions were reversed, and each year a considerable amount of such obligations was permanently retired.

[88] Proceedings of House of Delegates, 1784, p. 22.
[89] Idem, 1794, p. 83.

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CHAPTER II.

Period of Surplus Financiering (1789–1816).

The mere adoption of the national constitution did not effect any radical changes in the state's financial policies. The prohibition contained in that instrument against the use of bills of credit by the individual states was no hardship to Maryland. No such bills had been issued for several years; although their issue had been at times strongly urged by a considerable party, the proposition had met with little popular favor; and it is highly improbable that paper bills would have been again resorted to, even if the legislative power had not been restrained. The similar denial of the right to levy port duties, however, was, on its face, of vital importance to the state. Such duties had been the chief source of revenue since the abolition of the direct tax in 1785; and if no compensation had been made for this loss, the treasury would have been seriously embarrassed. Ample compensation, however, was immediately made by the funding law of Congress, by which the state debt was converted into a national debt.

From the standpoint of financial legislation the years from 1790 to the close of the second English war were almost barren—from that of taxation entirely so, except for an interesting tax upon banking capital levied in 1814. Treatment of the period will therefore be limited to the description of, first, the financial condition and practice in 1790; second, the fortunate series of events by which the treasury came into possession of a surplus large enough to render it independent of ordinary revenue, and, finally, the interruption to this happy condition caused by the war of 1812.

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Financial Condition in 1790.

The preceding chapter will have indicated the fiscal problems of Maryland at the time of its entrance into the new federation of states under a national constitution. The practices established hurriedly in a time of war had been allowed to continue almost unchanged. Little serious consideration had, indeed, been given to financial affairs. In most matters the treasurer had been left to his own resources and ideas. The public accounts were still in confusion. Only a small portion of the many debts owing the state had been collected; and the total amount of such debts likely to be collected was a matter of vagueness. The only improvement effected had been in the reduction of the state debt, which now stood at about $835,000. The reduction had been effected by the process, already described, of cancelling bills and certificates as received in treasury payments. New certificates were still issued, but after 1789 the annual amount issued was unimportant.

Ordinary Receipts and Expenditures in 1790.

The use of the general property tax during the Revolution and of port duties during the remaining years of independent statehood represented the only serious attempts by the Legislature to raise revenue by taxation. Indeed, the only other form of taxation at any time resorted to was that of the license tax, of which the principal applications had been carried over unchanged from colonial times. Licenses, for the granting of which payments were exacted, were required in five instances: (1) marriages[1] (30s.); (2) hawkers and peddlers[2] (£6); (3) keepers of ordinaries[3] (£6); (4) retailers of spirituous liquors (£3); (5) liquor sellers at horse races[4] (30s.). The tax on billiard-tables, imposed in 1780, did not continue as a state tax, although it was shortly reimposed for the benefit of the county governments. Marriage licenses were issued by the county

[1] Md. Laws, 1777 (February), ch. 12.
[2] Idem, 1784, chs. 7, 37.
[3] Idem, 1780 (March), ch. 24; 1784, chs. 7, 37.
[4] Idem.

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courts, and the taxes collected by the clerks thereof. In the other cases the licenses were issued by the same courts; but the collection of the tax was entrusted to the sheriff of the county.

Other sources from which a regular revenue could be expected were very few. Fines and forfeitures, exacted from violators of the law, gave a small and irregular revenue to the public treasury. Fees were charged for numerous services performed by the state; but the money so received was used almost entirely to remunerate the officers performing the services. The land office—from escheats, transfers, sales, etc.—produced a considerable but variable revenue. The State of Maryland never shared in nor laid claim to any portion of the public domain west of the Alleghanies. But, as successor to the Proprietor, the state came into possession of considerable land, principally in the western part of the state, in the disposal of which the Legislature had a free hand.[5] Part of this land was sold and the proceeds used for the ordinary expenses of government; but the major portion was used for bounties or pensions to the soldiers of the Revolution.

The ordinary expenditures of the state were correspondingly small, the most important single item being the civil list, *i. e.*, the expenses of the administrative department. Salaries were moderate, with little tendency to increase; and the number of salaried offices was kept at the minimum by applying, whenever possible, the fee-system of remuneration.[6] The cost of the judiciary was at this time divided

[5] Md. Laws, 1781 (November), ch. 20.

[6] The small size and the stationary character of the salaries paid by the state are shown in the following table, which gives the salaries of the more important offices for the years 1790, 1815 and 1842. The remuneration of offices where fees took the place of salaries cannot be given.

	1790	1815	1842
Governor	$2,666	$2,666	$4,200
Member of Executive Council	533	533	
Secretary of State			2,000
Treasurer, Western Shore	1,600	2,000	2,000
Chancellor	266	3,400	3,400
Chief Justice		2,200	2,200
Associate Justice		1,400	1,400
Member of Legislature; per diem		3.50	5.00

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between the state and the county governments. The former bore the expenses of the essentially state courts—the chancellor, the court of appeals, the general court, and the admiralty court, while the several counties by local taxes provided for the costs of the county courts.

Beyond these purely governmental expenses there were but two standing appropriations that had to be provided for annually. One of these arose from the allowance of half-pay pensions[7] to the disabled survivors of the Revolution, the other from the grant of state aid to certain selected schools.[8]

Treasury Administration in 1790.

The framework of government, so far as it concerned the financial administration, was thus outlined in the State Constitution of 1777: A governor, with no power of veto; an executive council of five members, to act solely in an advisory capacity; a legislature of two houses, both of the same authority, except as regards money bills, which could originate only in the lower house; two treasurers, one for either shore; and an auditor of the public accounts.[9]

The provision made for two treasurers was a mere palliation of the long-standing jealousy between the shores. In practice the system was unworkable. The Eastern Shore treasurer speedily degenerated into a mere agent; and the Western Shore treasurer became the responsible officer.[10] Occasionally, other officers were created for special purposes, such as the intendant of the revenue, in 1782, for the collection of tax arrears; but none of these additions had been permanent. There was a strong prejudice against the creation of salaried officers; and, as a rule, the easier method was adopted of throwing such new duties as developed upon the shoulders of the treasurer.

[7] Md. Laws, 1778 (October), ch. 14.
[8] These were St. John's College and Washington College.
[9] This office was not specifically created by the Constitution, but was there recognized.
[10] Hereafter the word "Treasurer," when not qualified, refers to the treasurer of the Western Shore.

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The government of the state was strongly centralized. Towns were being incorporated with considerable autonomy; but the larger county divisions continued to be little more than administrative units. The controlling body in the county was the levy court, composed of the associated justices of the peace. The authority of these courts had been gradually extended to include the management of all ordinary county affairs and, within specified limits, the levy and expenditure of local taxes; but the members of the courts were appointed by and were strictly responsible to the state executive. The county sheriffs were the only local officers locally elected. Both the sheriffs and the levy courts were used by the central government as collecting and disbursing agencies.

The Constitution made no reference to financial procedure other than the provisions that only the House of Delegates should originate money bills, and that no money bill should be attached as a "rider" to a bill of another character. The Bill of Rights, which was adopted at the same time as the Constitution, did, however, place explicit limitations upon the power of taxation. The first was a prohibition of poll-taxes. The use of the poll-tax had been greatly abused by the Proprietor; and, in just wrath, it was declared that such taxes are "grievous and oppressive and ought to be abolished, and that paupers ought not to be assessed for the support of government." The Bill of Rights, however, went further than this, and laid down a second canon of taxation. It declared that every person "should contribute his proportion of public taxes for the support of government according to his actual worth in real or personal property within this state," recognizing, however, "that fines, duties or taxes may properly and justly be imposed or laid with a political view for the good government or benefit of the state." This limitation of the taxing power to the citizens' actual worth in real and personal property later became a cause of frequent controversy; and, although liberally construed by the courts, introduced

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an element of uncertainty into many of the tax laws of the Legislature. It rendered many important taxes inoperative until passed upon by the courts, and was a bar to the introduction of many better financial practices.

THE STATE DEBT AND THE FUNDING LAW OF CONGRESS.

The funding law as passed by Congress, April, 1790, provided for the funding into one of three distinct forms of indebtedness—the foreign debt, the domestic debt, and the debts of the individual states. With the first of these Maryland had no concern. The funding of the ill-assorted mass of domestic debt did, however, have a direct bearing upon the finances of this state. The Maryland treasury had come into possession of a considerable amount of the various obligations issued by Congress during and after the Revolutionary War. These had been purchased in preparation for the state's being required to bear its quota of the continental debt.[11] So far they were unproductive, but, under the Funding Law, were now convertible with interest into new United States stock. By this conversion the state treasury received in payment of the principal of the old Congressional securities $628,989.90 in 6 per cent. stock (of which one third was not to bear interest until 1801), and, in addition, $298,320.31 in 3 per cent. stock in payment of accrued interest.[12]

The third portion of the Funding Law—that providing for the assumption of the debts of the several states—entailed much greater discussion, but was of less direct benefit to Maryland. The assumption provision was to the effect that the certificates of any state, issued prior to 1790 for expenses incurred in the prosecution of the war, should be exchangeable for United States stock. The exchange, however, was of a somewhat complicated character. Each subscriber received of the sum subscribed an equal amount of United States stock, of which four ninths bore 6 per cent.

[11] Md. Laws, 1785, ch. 88.
[12] Proceedings of House of Delegates, 1791, Report of Committee of Claims, p. 30.

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interest, three ninths bore 3 per cent. interest, and the remaining two ninths bore no interest until 1801 and thereafter 6 per cent. The amount of stock for which citizens of each state might subscribe was proportioned to the supposed amount of certificates outstanding at the time. No account was taken of the relative burden the states had borne, nor even of the original amount of certificates issued. Maryland felt that its efforts to pay off its own debts had been wasted,[13] and viewed the passage of the assumption measure with no great favor. A resolution in condemnation of the policy was passed by the House of Delegates, but was later rescinded by the casting-vote of the speaker.[14]

The measure having become law, however, it was to the manifest advantage of the state to have as many as possible of its creditors take advantage of it. To most of these the offer of Congress was in itself not a sufficient inducement. The state credit was practically as good as that of the United States; and the exchange of the securities of the former for those of the latter, under the complicated interest arrangement, meant a surrender of a 6 per cent. investment for one of 4 per cent. or less. For the state to force its creditors to make the exchange would be on the state's part a virtual repudiation of so much of its just debt. An act of the Legislature was passed which attempted to supply the necessary inducement, and, at the same time, maintain the faith of the state. By this act the state agreed to receive from all subscribers under the assumption provision of the Funding Law their proportions of 3 per cent. and deferred stock (*i. e.*, stock to bear no interest until 1801 and thereafter 6 per cent.) and to give in exchange an equal amount of United States 6 per cent. stock bearing immediate interest.

The maximum amount of $800,000, allowed for the subscription of Maryland certificates, proved ample. At the expiration of the time fixed by Congress only some $302,-

[13] Proceedings of House of Delegates, 1791, p. 88.
[14] Maryland Journal and Baltimore Advertiser, December 31, 1790. Proceedings of House of Delegates, pp. 86, 105.

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522.66[15] had been subscribed; and, under an extension of the time privilege, this was increased to only $517,491. This sum, however, did not completely exhaust the debt owing by Maryland. A small number of creditors, whether from indifference or ignorance, did not take advantage of the act at all. Furthermore, a considerable portion of the outstanding certificates, being issued for other than military purposes, were not included within the benefit of the law.[16] Both of these classes of debt had to be borne by the state treasury itself, but their total amount proved inconsiderable. Many of the certificates, originally issued in small denominations to soldiers in the field and others, at a time when paper money was of little worth, had been lost or destroyed, and were never presented for payment.[17] The Van Stophorst loan was the most important part of the debt not taken care of by the assumption law. The state had never denied the validity of the original loan of £40,500 with interest,[18] but disputed certain extra sums that had been added as damages and costs. A compromise was finally effected in 1793, whereby the creditors agreed to accept United States deferred stock at par in full settlement of their debt.

Collection of the Debts due the State.

The collection of the numerous outstanding debts due the state was the principal financial concern of the government during the first two decades. These debts represented: (1) money due from the sale of confiscated British property; (2) arrearages of taxes and of other revenues; (3) a disputed claim to a large amount of Bank of England stock; (4) certain miscellaneous debts, some holding over from colonial times, and too small in amount to warrant separate treatment.

[15] Proceedings of the House of Delegates, 1791, pp. 87–88.
[16] Idem, 1791, p. 87.
[17] Idem, 1791, p. 89.
[18] Idem, 1795, p. 63; 1796, p. 30.

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Confiscated British Property.

Because of the scarcity of purchasers with ready money during the war period, the state had adopted the policy of disposing of confiscated property on credit, the purchaser being required to deposit a bond for the security of his debt. The same scarcity of specie continuing during the years immediately succeeding the war, the same policy was also continued. By the act of 1784[19] such debtors were granted a complete exemption from the payment of the principal of their debts for a period of five years; and a similar exemption was promised future purchasers. With the expiration of this period of grace in 1790, a still further indulgence was shown. A system known as "installing" was adopted, by which all purchasers, future as well as past, were permitted on deposit of a bond to make settlement in a series of annual instalments.[20] Payment of the principal sum was permitted to be made in state certificates. But the immediate retirement of certificates under the Funding Law of Congress deprived debtors of this means of payment; and, in compensation, it was provided that the annual instalments might be paid in United States stock.[21] As this stock was at a discount, the permission was quite generally accepted. The act was enforced with little strictness. In a few cases bonds were executed upon, or the property retaken, but without any great benefit to the state; and many debtors were entirely excused from payment. The disposal of the unsold property and the final settlement of the various accounts were not accomplished for some thirty years.

Arrearages of Taxes, Etc.

The presence of this item was attributable almost entirely to the negligence of those entrusted with the collection of the public revenues. Nor did these arrearages arise altogether during the war period or in connection with the direct taxes of 1777–1785, in which cases the extreme diffi-

[19] Md. Laws, 1784, ch. 55.
[20] Idem, 1789, ch. 47.
[21] Idem, 1790, ch. 41.

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culty of collection offered good excuse. The habit of negligence was so prevalent that such revenues as those arising from licenses and port duties, which were extremely easy of collection, were in many cases not turned into the treasury for several years after they were due. The same system of "installing" was applied to tax arrearages, as in the case of the debts due for sales of confiscated property; and, to facilitate the collection of all these debts, a special office was created. An intendant of the revenue had been appointed for a similar purpose during the Revolution, but the office had been discontinued in 1786. In 1790 the office was revived under the name of the agent of the state.[22] At first, the agent was merely given power to supervise the collection of the arrears of the direct taxes. Later, however, his field was not only so extended as to include the collection of all classes of revenue not promptly paid, but he was also given a general supervisory power over all payments into the treasury. He was vested, moreover, with almost unlimited discretion as to prosecuting, releasing or compounding with state debtors. As a result of the exertions of the state's agent, the larger portion of the debts due the state were liquidated; but, at the time of the abolition of the office in 1801, there was a considerable amount not yet collected. This amount tended to increase rather than to grow less. In 1818 it was estimated that fully $260,000 would be lost to the state by reason of bad debts.[23]

The Bank of England Stock.

Maryland's interest in Bank of England stock originated in colonial days. In 1733, for the first time, an emission of bills of credit was authorized to the amount of £90,000, and a sinking fund for the redemption of the issue was provided by levying a special duty upon tobacco exports. The management of this fund was placed in a board of trustees, resident in London, which received and invested in Bank of England stock the proceeds of the duty.[24] In

[22] Md. Laws, 1789, ch. 50.
[23] Proceedings of the House of Delegates, 1818, p. 56.
[24] Md. Laws, 1733, ch. 6.

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1756 another issue of bills was sanctioned upon conditions similar to those of the earlier issue.[25] For various reasons, this fund in London was not drawn upon in full, and, by gradual accumulation, amounted in 1775 to nearly £30,000.[26] With the first skirmishes of the Revolution, the Convention immediately drew upon the London trustees; but they, staunch loyalists, refused to honor the drafts, and the state retaliated shortly by confiscating their property in Maryland. With the cessation of the war, the state made repeated attempts to recover its holding of bank stock;[27] but the trustees, reduced now to two by the death of one of their members, refused to make an accounting until their property should be returned by the state.[28] The settlement of the question now depended upon the attitude which the British Government should assume. That government had never actually seized the stock concerned, but, at the outbreak of hostilities, had forbidden the payment of dividends thereon, and seemed disposed to sanction the position of the trustees. Nevertheless the state, through a special agent,[29] instituted suit in the English courts for the recovery of the stock with accrued interest. The fight was long drawn out; the court was unwilling to assume the responsibility of deciding in such a delicate matter, and intimated that the case was one for diplomacy to settle. Acting on this advice, the state referred the matter to the President, who directed the American Minister to present the claim to the British Government.[30] After a long controversy, which at times looked hopeless for Maryland, the claim was finally recognized. The Bank of England stock to which the state then became entitled was disposed of for $648,484.34, and the money invested in the stock of the United States Government.[31]

[25] Md. Laws, 1756, ch. 5.
[26] Proceedings of the House of Delegates, 1777 (June), pp. 110–113.
[27] Md. Laws, 1783 (April), ch. 35.
[28] Idem, 1784, ch. 76.
[29] Idem, 1784, ch. 76; 1791, ch. 86.
[30] Proceedings of House of Delegates, 1796, p. 72; Md. Laws, 1801, ch. 103; 1802, Resolution.
[31] Proceedings of House of Delegates, 1806, pp. 8 and 18.

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The Tax on Banking Capital.

The economic and political conditions of the colonial period gave little or no room for the establishment of banks. Such institutions demand for their successful existence a relatively complex form of industry; and, prior to the Revolution at least, industry in America was of an essentially simple type. Banking, in its primitive definition, as a convenient instrument for the issue of paper money, was frequently exploited in certain of the colonies—*e. g.*, the Loan and Land Banks of Massachusetts, etc.—and usually with disastrous results. This species of bank the Proprietary of Maryland was spared. Its occasional indulgence in paper money was in the form of the direct issue of bills of credit by the government itself; and the power of issue was at no time seriously abused. During the Revolution a well-conducted bank could have been of great service to the state government, especially as a corrector of the currency disorder; but the few attempts made to establish such an institution had met with no success.[82] A similar fate attended a revival of the project in 1784; and it was not until 1790 that the Legislature gave its consent to the incorporation of a bank by granting a charter to the Bank of Maryland.[83] Notwithstanding the immediate success of this institution, the establishment of other banks proceeded very slowly. As late as 1810 there were but six banks in the state, of which four were situated in Baltimore City. Thereafter, however, the extension was rapid.[84]

The success of these new corporations inspired the hostility of a large class of citizens, the more so because of the natural tendency of the banking capital to centralize in one city, namely, Baltimore. This hostility was in part the result of an actual fear that the former disastrous experience of the state with paper money might be repeated, and in part the expression of rural prejudice toward capitalistic

[82] On several occasions during the Revolution the state offered to become surety for any bank that might be established. The offers, however, were not accepted. Cf. Md. Laws, 1780 (June), ch. 28.

[83] Md. Laws, 1790, ch. 5.

[84] See Bryan, History of State Banking in Maryland, p. 25 et seq.

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institutions, from which, as the banks loaned only upon short-time notes, the farming element could expect little benefit. This party demanded, in lieu of their complete abolition, that the banks should be subjected to a heavy tax. Nor was the demand restricted to banking institutions. The principle was definitely formulated that all corporations enjoying special privileges from the state—such as canal and road companies—should be compelled to make a return for such privileges. From 1804 to 1813 this question was a centre of legislative controversy, the House of Delegates usually favoring the principle of a corporation tax, the Senate regularly rejecting it.[35] Care was taken to popularize the proposal by so framing it that it might subserve the growing demands of the people for a public school system and for internal improvements; and, finally, in 1813, such a law was passed by both houses, but was limited in its application to banks alone.[36] This combination of motive is shown in the following summary of the act as revised in 1814:[37]

1. The banks of Baltimore City, together with certain banks in the western part of the state, were required to complete the National Road as far as Cumberland at their own expense.

2. Each bank in the state was to pay during the continuance of the act an annual tax of twenty cents upon each $100 of paid-in capital, and at the same rate upon every increase of capital. The total tax was discountable before January 1, 1816, into a lump payment of $200,000.

3. The proceeds of this tax were to be invested and kept by the treasurer as a distinct and separate fund, to the credit of the counties equally, for the purpose of establishing free schools.

4. The charter of the banks accepting the act were to be extended until January 1, 1835; and in the mean time the state was to impose no further taxes upon the banks, nor

[35] Proceedings of House of Delegates, 1804, p. 84; 1806, p. 28; 1810, p. 41 et seq.
[36] Md. Laws, 1812, ch. 79.
[37] Idem, 1813, ch. 122.

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charter any other banking institution within the city of Baltimore.

The charter of the several banks, with one exception, had been timed to expire at the same date, January 1, 1815; and thus the enforcement of the act was made a comparatively easy matter. In its original form, indeed, certain features were strongly objected to by the banks; but, in its revised form, as given above, it was accepted by the several banks without undue caviling. The tax was small, and the road construction provision was regarded as a good investment—so good, in fact, that, upon several other occasions, similar arrangements were made for the construction of roads and other internal improvements.[38] As it turned out, however, the Cumberland Road, like nearly all such enterprises in Maryland, made but scant financial return; and the investment of a million dollars or more made by the banks under this act was almost a complete loss.[39]

The small tax on capital stock—one fifth of one per cent.—was hardly a burden to the banks and could easily have been made larger. It proved, however, a steady, easily collected and growing source of revenue to the state. Occasionally the receipts therefrom were diminished by the failure of certain banks, or by the release of others from the tax when in financial difficulty. But, as an offset to this, was the application of the tax to every increase in banking capital and to new banks as established. Over the course of some fifty years it yielded an average annual income of some $35,000.

The Financing of the War of 1812.

Although the second English war was long brewing and although the State of Maryland, with its extended water-front inviting naval depredations, was certain to suffer from such a conflict, the Legislature failed to make adequate preparations for its coming. Laws were passed in 1807

[38] Md. Laws, 1821, ch. 131; 1824, ch. 92; 1827, ch. 42.
[39] Bryan, p. 61.

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and 1811[40] for reorganizing and disciplining the militia, sadly neglected during the preceding twenty-five years of peace; some ten thousand stands of arms were ordered;[41] and various measures were considered for a state factory for making military supplies,[42] for erecting arsenals, and for encouraging the home production of cottons and woollens. But, as a whole, the precautionary measures taken were few and ineffective.[43] The Legislature was unwilling to make sufficient appropriations, and depended upon popular enthusiasm to establish a well-drilled militia. In Baltimore City and the northwestern counties this enthusiasm was strong; and, with the first talk of war, numerous volunteer companies were raised and equipped at private expense. In the southern counties, however, the belligerent attitude of Congress was unpopular, and little preparation was made.

In its failure to make effective provision against the possibility of war the Legislature was not without excuse. The National Government had been constituted the medium of national defense, and was presumably the responsible director of all military operations. As events developed, however, and largely owing to the unpreparedness of the National Government itself, the state was left in great degree to its own resources. Early in 1813 the Secretary of War asserted the doctrine that the United States would pay the expenses of all militia called out or recognized by that government. But, as the Chesapeake Bay immediately became, and continued to be, a centre of British aggression, the state was, in many cases, unable to wait upon the tardy action of the National Government, and was forced to raise troops, and even equip a small navy, upon its own initiative. Ultimately, the state was reimbursed in part for the resulting expenditure; but in the mean time such expense had to be met by the local treasury. The method by which the

[40] Md. Laws, 1807, ch. 128; 1811, ch. 182.
[41] Idem, 1808, ch. 210, and various Resolutions.
[42] Idem, 1808, Resolution.
[43] Governor's Message, 1813.

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necessary war funds were raised presents few points of interest. At the outset, the Legislature adopted, and thereafter steadily adhered to, the policy of temporary loans. No new taxes were laid during the whole course of the war; nor was any other effort made to increase the ordinary receipts of the treasury. The ostensible reasons for the adoption of a borrowing policy to the exclusion of taxation is thus summarized from a committee report of 1814:[44] To raise funds, there were only three alternatives, taxation, the sale of part of the state's investments, and loans. Taxation, in view of the war taxes of Congress, was already "extended to its utmost limit." The sale of the state's investments was equally inadvisable in the depressed condition of the stock-market. Borrowing was, thus, the most feasible alternative, provided the money could be obtained at 6 per cent. or less; and there was every reason to believe that this could be done. Taxes, the committee realized, must ultimately be resorted to; but it would be better to postpone the period of taxation until a "season of prosperity would increase the ability of the people to meet such a charge." Furthermore, it was to be considered that the United States Government should, and probably would, reimburse the state for its expenditures.

This argument rested upon two optimistic assumptions; first, that the war would be of short duration, and, second, that the expense to the state would not be great. Both of these assumptions proved to be true; and thus the temporizing policy of short-time loans did not result in the disaster that would otherwise have occurred.

The long stagnation of business preceding the war had caused the accumulation of much idle capital in the hands of the local banks; and this was the fund upon which the Legislature now depended in authorizing a series of loans, aggregating nearly a million dollars. Of the sum thus authorized there was actually borrowed $436,000, of which all but $12,000 was advanced by the banks. As the total cost of the war to the state was estimated to have

[44] Proceedings of the House of Delegates, 1814, pp. 43, 44.

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been slightly less than $450,000, it would appear that only some $14,000 was provided out of current revenues.

The several loans were negotiated at the uniform rate of 6 per cent., and were repayable in 1815–1816. As, however, no provision whatsoever had been made for their redemption, there was no money then available for that purpose. Finally, in 1817, a settlement was effected with the creditors, by which they agreed to accept United States 6 per cent. stock at par to the full amount of their several claims. Thus the net result to the treasury of the war of 1812 was a decrease of $436,000 in the capital account of the state.

The Effect of a Treasury Surplus.

The war of 1812 was a marking-point in the financial history of the state. So far there had been little necessity for considering the question of ways and means. The problem had been to dispose wisely of an accumulating surplus. This surplus had been the result, in part, of economy of expenditure, but, in greater part, of the series of fortunate events already described. The Congressional Funding Law of 1790, by relieving the state of the major portion of its indebtedness and providing the treasury with a considerable fund of United States stock, had, at one stroke, raised the finances from a condition of grave difficulty to one of comparative security. The return of prosperity had enabled many of the state debtors to discharge long-standing obligations to the state; and the money so received not only provided amply for the current expenditures, but also produced occasional surplusses, which could be invested in interest-bearing securities.[45] Finally, the payment of the

[45] In 1796 the treasury was in a condition to warrant a loan of $200,000 in United States 6 per cent. stock to the commissioners of the city of Washington to aid in the development of that place. (Md. Laws. Resolutions 1796 and 1797.) This loan was repaid with interest in due time, and is quite distinct from the "advance" of $72,000 to the United States for public buildings, authorized in the session of 1790. This "advance" was never repaid, and has for many years been the basis of a periodical claim offered in Congress. The point in dispute is whether the "advance" was intended

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English Bank stock increased the public funds to such an extent as to render the treasury almost independent of other revenue than that of interest on its investments.

In 1813 the invested capital of the state amounted to $1,475,922, yielding an annual return of over $90,000 and providing for about two thirds of the ordinary expenditures. The form of investment was as follows:

Bonds of United States	$934,822
Stock of Local Banks	516,100
Other Stock	25,000

State chartered banks were recent and to a great extent untried, but almost from their origin the Legislature had adopted a policy toward these institutions which proved very beneficial to the public finances. This policy, as usually practiced, was to reserve to the state in each bank charter granted the privilege of subscribing at par to a certain, and usually a goodly, number of shares in such bank, the subscription to be made at the state's convenience. By this means the state was enabled to invest its funds in such institutions as should prove their worth and at par, when the stock of the bank invested in was at a considerable premium. The rates of dividends paid by these banks were naturally subject to more or less fluctuation; but, upon the whole, this form of investment proved very productive, returning over a period of forty years an average dividend of over 6 per cent.

With an ample income thus assured from invested capital, there was no incentive to increase the sources of revenue, and no attempt was made to do so. The existing sources were allowed to continue without change; but these, as has been noted, were few in number, of almost no burden, and excusable on other than fiscal grounds. Maryland

to be a loan or a gift. The wording of the original act is inconclusive; but the absence of any provision for repayment or for interest would indicate that the money was intended as a gift. Unfortunately, the records are so scant that it is not even certain whether the full $72,000 was advanced. The sum of $48,000 certainly was; and there is strong presumption that all was ultimately advanced. (Md. Laws, 1842, Resolution 34; 1791, ch. 45.)

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had practically realized the millennial condition of a government supported without taxation. Absence of taxation and of revenue legislation was the mark of the first quarter-century of the state's history—a thing fortunate in itself, but productive of much later evil. At first, exemption from taxation had been accepted by the people as a happy relief from the burdens of the Revolution. Then a feeling was bred that such was the normal condition of things, until finally, with a new generation, taxation, especially direct taxation, became to the popular mind a thing intolerable. "Capital stock" was made a fetish of. The main endeavor was to preserve "the capital of the state which had been accumulated by the economy and foresight of our ancestors."[46] Such a policy, of course, could not survive any extraordinary demand upon the treasury, such as occurred at the outbreak of the war of 1812. For a time the blow was postponed by a temporizing policy of borrowing; but, sooner or later, the loans had to be repaid with interest. To do so, the capital stock was violated, but grudgingly, and in full expectation that it would soon be restored to its former condition.

The desire to avoid taxation and to accumulate a "capital stock" acted as a compelling restraint upon extravagance of appropriation. Because of it, the extension of the state's activities proceeded very slowly. The endeavor was to restrict the functions of the state as far as possible to those of bare administration, and to leave the performance of all other public services to the county or town governments, although these bodies were still denied powers adequate to the task. Thus, when the demand for state encouragement of a free school system became so pressing that it could no longer be neglected by the Legislature, the aid finally given was not in the form of a direct appropriation, but by the indirect method of a special fund—the bank tax—which was regarded and treated as entirely distinct from the ordinary accounts of the treasury.

The administrative expenses underwent little or no

[46] Proceedings of House of Delegates, 1813, pp. 37–39.

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change. Salaries remained almost stationary; and the only new salaried office created was that of a "trustee," whose sole duty was the management of the state's holdings of United States stock.[47] The annual sessions of the Legislature tended to become more expensive; but the increase was as yet very gradual. The judicial system of the state, however, underwent radical alteration, with consequent effect upon the cost of that department. The first change was made in 1797,[48] when in place of the former system of county courts the state was divided into five districts, each with a chief justice and two associate justices. The cost of the new establishment was laid upon the counties. In 1806[49] another change was made. The state was redivided into six districts, the former general court and court of appeals were abolished, and all appellate jurisdiction was transferred to a new court of appeals, composed of the chief justices of the six districts. Under the new system, however, all salaries were paid out of the state treasury.

The first and for long the only important departure from the rule of limiting the state's financial activities to those of administration was the authorization of a state penitentiary in 1805. The movement for prison reform, which swept over the country[50] at the beginning of the century, found in the prison system of Maryland a fitting subject for its ministrations. There was, indeed, an absence of system. The jails were county institutions, their character and manner of conduct dependent upon the whims of individual sheriffs. No special buildings were supplied; and those in use were poorly equipped and badly managed.[51] No thought was given to the possibility of reforming the criminal. Offenders of all classes were hoarded together indiscriminately, to the moral harm of lesser offenders and

[47] Md. Laws, 1790, ch. 41.
[48] Idem, 1796, ch. 43.
[49] Idem, 1805, ch. 65 and 86; 1804, ch. 55.
[50] Maryland Journal, July 6, 1796.
[51] Governor's Message, 1796, printed in Maryland Gazette (Annapolis), November 24, 1796.

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to the injury of the public interest. To ameliorate this condition, the Legislature in 1805 authorized the establishment of a central penitentiary, in which the new reformatory principles might be tested. By 1812 suitable buildings had been provided for the productive employment of the prisoners. The total expenditures for this purpose amounted to $110,000, all of which had been provided out of current revenues.[52] The Legislature, although influenced in this undertaking largely by humane ideas, did not anticipate that the penitentiary would be a source of expense to the state. On the contrary, it was believed that, after a reasonable initial outlay, the new institution would support itself from the sale of articles manufactured by the prisoners, and would ultimately yield an actual profit.

[52] Proceedings of House of Delegates, 1821, pp. 98, 99.

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CHAPTER III.

Period of Indirect Taxation (1817–1841).

A second period in the state's financial history began with the payment of the war loans in 1817. By that operation the capital of the state was reduced by $436,000, and its annual income by the amount of the interest thereon—$26,160. Nor was this the only effect of the war upon the public revenue. The business depression following the outbreak of war bore hardly upon the banks of Maryland. Some were forced to suspend; others warded off this fate by reducing the amount of their capital stock. The state had $516,100 invested in the stocks of certain of these institutions, and up to 1818 had been rewarded by annual dividends averaging more than nine per cent. By suspension and capital reduction this was now reduced to less than five per cent., representing a money loss to the state of over $20,000 a year. As it happened, this decrease in revenue was accentuated by an almost coincident increase in expenditure. The latter phenomenon, however, was neither so sudden nor of such immediate importance as the former, nor can it be ascribed so distinctly to the war. It represented rather a relaxation of the old spirit of economy. Conditions were shaping for a broader view of the question of the state's relation to the public service.

The effect of these opposing movements—decreasing receipts, increasing expenditures—was to change completely the old order of things. From a condition in which the chief problem had been to dispose of an accumulating surplus, the treasury was suddenly reduced to a condition of deficit. At first, the Legislature tried to gloss over the fact that there was a permanent deficit by further borrowing from the banks and by other temporary devices. These failing, it became necessary to revise the whole revenue sys-

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tem. Taxation was revived; but, in so doing, the Legislature acted fitfully, unwillingly, and with an overwhelming prejudice against direct taxation.[1] For a while, indeed, even a modified direct tax had to be resorted to; but it was small in amount, short-lived, and offered in a form as inoffensive as possible. With this exception, the new financial measures carefully avoided any semblance of direct taxation. The field of the license tax was broadly extended, and such non-taxing revenue measures as a state lottery system were particularly favored. By these means the revenues were in time made equal to the ordinary expenditures. The Legislature, however, was slow to grasp the permanent character of the changed conditions. The ideal of a non-taxing state government still held sway. The new taxes imposed were for long regarded as temporary, a necessary evil to be borne until some streak of fortune should restore the treasury to its former condition of surplus. The heavy investment made by the state in internal improvement companies was, in one view, but an expression of this desire—a means by which the fallen fortunes of the state might be restored.

During the latter half of the period now under review this question of state aid to internal improvements enters, and, in time, becomes the dominating factor in the public finances. For several reasons, however, the discussion of this important topic can be conveniently and logically postponed to another chapter. In the first place, the money expended in improvement ventures was derived entirely from the issue of long-term bonds, the interest charge of which did not become a serious burden until nearly the end of the period. In the second place, so firmly rooted was the early belief that these investments would be self-supporting that, even when they failed to become so, the Legislature comforted itself with chimerical hopes, and, for a long while, refused to recognize the true situation. Thus, up to the collapse of the whole movement in 1841, the financial legislation of the state was affected slightly, if at all, by

[1] Governor's Message, 1820. Niles' Register, Vol. 18, p. 129.

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the introduction of the new policy. In the intervening time the ordinary business of the treasury was conducted distinct, as it were, from the business of internal improvements.

Extension of Taxation.

County Assessments.

The need for immediate revenue forced the Legislature in 1821 to the extremity of a direct tax. It was intended simply as a temporary measure, to be dispensed with as soon as other means could be devised for relieving the treasury distress,[2] and, in fact, was in operation only five years. Two methods of levying such a tax suggested themselves: First, the usual one of a direct percentage tax upon the value of the real and personal property within the state; and, second, the more indirect method of levying specific lump assessments upon the several counties, leaving to those bodies the labor of collection. Almost without dispute the county assessment system was determined upon. The manifest weakness of such a system was that the apportionment of the assessments among the counties would necessarily be more or less arbitrary; but, on the other hand, there were plausible reasons in its favor. In the first place, it would render unnecessary the difficulty and expense of a new general assessment. No property tax had been imposed by the state, and in consequence no general assessment had been made, since the close of the Revolution. Moreover, the assessments used by the local governments for the levy of local taxes, although made by legislative sanction and in conformity to standing acts,[3] had been too irregular and differed too greatly in details to form a basis for a state levy. In the second place, and still more in accord with the temper of the time, a new general assessment, with the resulting machinery, savored too much of a permanent institution.

[2] Proceedings of House of Delegates, 1821, Report of Ways and Means Committee, p. 56.
[3] Md. Laws, 1812, ch. 191.

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As a basis for the apportionment among the counties of the amount assessed by the act of 1821, the proportion-table, used by the Federal Government in levying the war taxes of 1813–1816, was bodily adopted. That table had been prepared by United States agents in the hurry of war and was doubtless very defective. But, even assuming its correctness at the time of its preparation, the important changes that had since taken place in the relative growth of the several counties rendered it an extremely inequitable basis of taxation.[4] Notwithstanding this, the same scheme of apportionment was adhered to in the assessment of 1822,[5] and with slight changes, and these without sound reason,[6] in the assessments of the three succeeding years.[7] That little objection was made to it was probably due to the comparative smallness of the amounts assessed. The largest sum demanded of any one county was only $19,468 —for Baltimore County in 1822—and the smallest only $320 —for Caroline County in 1825.

In form and phraseology the successive acts were almost identical. The Levy Court of each county was simply directed to levy upon the assessable property within its jurisdiction a stated sum of money, clear of expenses, to be collected in the same manner as the ordinary county taxes, and to be paid into the state treasury within a specified period of time. Extra bonds were required of the county collectors, and strict penalties provided for negligence. As the levy courts were appointed by and responsible to the central government, there should have been no difficulty in enforcing prompt accounting. But owing primarily to the customary indulgence of the state toward its debtors, the returns were very irregular; and nearly 25 per cent. of the total amount levied was never collected

[4] Proceedings of House of Delegates, 1823, p. 97. For table see Niles' Register, 1813, September 11.

[5] Md. Laws, 1822, ch. 139.

[6] By 1823, ch. 150, the several assessments were slightly more than doubled, but, in case of Baltimore County, were only increased one and two third times, and, in case of Washington County, two and one half times.

[7] Md. Laws, 1823, ch. 150; 1824, ch. 159; 1825, ch. 141.

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at all. This is shown in the following table, which gives the amounts assessed upon the counties by year and the amounts collected during the course of the corresponding fiscal year:

Amounts assessed by Act of		Collected by December 1 of	
1821	$ 30,357.00	1822	$ 2,544.00
1822	60,714.00	1823	9,138.00
1823	60,557.00	1824	52,827.29
1824	40,371.33	1825	40,786.90
1825	20,185.66	1826	33,357.63
		1827	32,399.57
Total assessment	$212,184.99	Total collected	$171,053.39
	171,053.39		
Uncollected	$ 41,131.60		

License Taxes.

The comparatively little use previously made of the license tax offered a tempting opportunity to the Legislature in its search for indirect methods of taxation. The opportunity was grasped, and the ten years succeeding 1819 witnessed a sudden and broad extension of the license principle. The license taxes already in force were continued, in most cases increased, and a number of new forms were introduced. From this time dates the license tax, applied on the southern principle of a general business tax.

Traders.—The extension of the license tax to merchants as a class was a matter of gradual development. The first step was taken in 1820, when a license, of very moderate cost ($8), was required of "Retailers of Dry Goods."[8] Under this term, however, was comprehended only those dealing in wares of foreign production; and importers selling in the original package were specifically exempted. The wording of the act was sufficiently broad to include dealers by wholesale as well as by retail; but this was apparently not the intention. Two years later a supplementary act brought importers and wholesalers within the provisions of the former act, but at a much higher license charge ($50).[9] The legality of the tax upon importers sell-

[8] Md. Laws, 1819, ch. 184.
[9] Idem, 1821, ch. 246, and 1824, ch. 158.

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ing in the original package was immediately questioned. The tax was affirmed by the Maryland court of appeals; but, on appeal to the United States Supreme Court, it was held that such a tax violated that section of the United States Constitution which denied to the state the power to levy import or export duties, as well as the section vesting Congress with control over foreign commerce. The court argued that the Constitution conferred upon the United States Government exclusive power of levying import duties; that the payment of such duties by the importer implied in him a right to sell in some form or other; that sale in the original package was the most convenient expression of this right; and that a license tax upon importers was in reality a tax upon imports and, therefore, unconstitutional. The state, of course, could not be denied indefinitely the power of taxing goods simply because they had been imported at some remote period; and this power, in the court's opinion, came into play as soon as such goods lost their character of imports by being "incorporated or mixed with the mass of property" in the country.[10] This somewhat indefinite phraseology meant, evidently, that "incorporation" would take place whenever the original package was broken, or the goods had passed from the hands of the original importer. The decision was of considerable financial importance to Maryland, as the license tax in question would have been very productive, owing to the large and rapidly growing foreign commerce of Baltimore City.

In 1828 a more comprehensive law was enacted. Under it, no one, except the actual producer, was permitted to sell wares of any description, whether by retail or wholesale, whether of foreign or domestic production, without first obtaining a license ($12).[11] A higher rate ($18), however, was exacted from keepers of ordinaries, and, with some exceptions, all other retailers of spirituous or

[10] Brown *v.* Maryland, 12 Wheaton, 419. (Chief Justice Marshall handed down the opinion.)
[11] Md. Laws, 1827, ch. 117.

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fermented liquors in quantities less than a pint. The sheriffs were required to make returns of all trades subject to the law, and were given incentive for strict accounting by the allowance of a fee for each license taken out that was upon their lists. Itinerant traders—hawkers and peddlers—were not included within this law.

This system of a uniform license charge, however, was superseded in 1832 by the more usual one of adjusting the charge to the magnitude of the business conducted.[12] The cost of the license was now graduated according to the amount of stock on hand at the principal season, the rates varying from $12 for stock worth less than $1000 to $50 for stock worth over $20,000. As usual, however, keepers of ordinaries, taverns, etc., were accorded special treatment, such persons being required to pay a five per cent. tax upon any excess above $500 in the annual value of their places of business, in addition to the regular trader's license.[13]

Auctioneers.—The auctioneer's license tax was the result of the diversion of the tax on auction receipts from the Baltimore City treasury to that of the state. The City of Baltimore, since the second year of its incorporation, had imposed a tax upon the receipts of auctioneers, acting apparently upon the general authorization of its charter "to provide for licensing and regulating auctioneers and pawnbrokers."[14] The proceeds of this tax had been applied, at least in great part,[15] to deepening and cleaning the harbor, a measure which the city party claimed was "not only of immense importance to the city, but to the state at large." Notwithstanding such arguments, the Legislature had frequently discussed the advisability of converting this source of revenue to the uses of the state;[16] and, with the financial stringency following the war, the temptation could no longer be resisted. A tax of one per cent., the same as that previously imposed by the city, was levied

[12] Md. Laws, 1831, ch. 262.
[13] Idem, 1833, ch. 266.
[14] Hollander, Financial History of Baltimore, p. 77.
[15] Proceedings House of Delegates, 1819, p. 70; 1826, p. 403.
[16] Idem, 1816 (back).

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upon all sales at public auction; and the privilege of conducting such auctions was confined to auctioneers, appointed by the Governor and council.[17] The number of these auctioneers was limited to twenty. They were required to take out annual licenses ($750), and render accounts to the city court. Auctioneers of special classes of goods, such as books, prints, horses and carriages, were subjected to a smaller tax. Despite the monopolistic character of this new system, it has continued in its main features down to the present day.

In mitigation of the loss to Baltimore of the auction duties, the annual sum of $20,000 was promised that city for the purpose of improving its harbor.

Hawkers and Peddlers.—The curious prejudice against "hawkers and peddlers," by force of which such persons had from an early time been subjected to an extravagant tax, showed no sign of diminution. On the contrary, the tax was increased; and financial considerations were sacrificed to this feeling of antipathy. In 1820 the charge for a "hawker's and peddler's" license was raised to $40;[18] and, somewhat later, a law of utmost stringency was directed toward persons of this occupation. The license charge was increased to $50 for peddlers using one horse and to $60 for those using two, the rate for foot peddlers being continued at the earlier figure; the privilege of such license was not to extend beyond the limits of the "shore" wherein issued; the license had to be carried and shown on demand; and stringent penalties were provided for the slightest violation of the law.[19]

Billiard-Tables.—A license tax upon billiard-tables for the benefit of the counties had been early authorized;[20] and several cities and towns had been accustomed to derive revenue from this source. But no attempt was made to levy such a tax for the use of the state prior to 1825.[21] The

[17] Md. Laws, 1827, ch. 111; 1828, ch. 148.
[18] Idem, 1819, ch. 184.
[19] Idem, 1840, ch. 154.
[20] Idem, 1798, ch. 113.
[21] Idem, 1824, ch. 64.

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imposition of the present state tax ($100), however, did not deprive the local bodies of the power of imposing an additional tax upon the same objects.

Attorneys-at-Law.—In 1822[22] an interesting resolution was passed by which attorneys-at-law were required to take out an annual license ($5.00), the proceeds of which were to be subject to the order of trustees for the benefit of Luther Martin.[23] The resolution was probably unconstitutional, being a use of the taxing power for private purposes, but it was rescinded before its legality had been questioned in the courts,[24] although not before it had been actually enforced for nearly a year.

Note-Brokers and Dealers in Lottery Tickets.—In 1819[25] a law was passed requiring all brokers engaged in buying and selling bank-notes or lottery tickets to obtain an annual license costing five hundred dollars, in addition to bonding to the state for $20,000, and subscribing to a most stringent oath. The object of these extravagant requirements was social rather than financial—to drive out of business the class of men known as note-brokers, who had risen as usual during a period of general suspension of specie payments among the banks of the country.[26] No revenue was received under this law, nor indeed were any applications made for its benefits. Three years later a less stringent act was passed for the licensing of dealers in lottery tickets; but, as this was associated with the general lottery legislation, it will be referred to under the later treatment of that subject.

Miscellaneous Licenses.—Besides the regular business licenses above enumerated, certain other transitory occupations were subjected to similar restrictions. Thus, owners or occupants of fisheries were granted licenses for the sale of liquors and other commodities during the fishing season ($6); a license was required for selling spirituous liquors

[22] Md. Laws, 1821, Resolution 60.
[23] It was to cease at the death of Martin.
[24] Md. Laws, 1822. Resolution 16.
[25] Idem, 1818, ch. 210.
[26] Bryan, History of State Banking in Maryland, p. 54.

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at horse races; and a similar provision was made for militia musters.[27] Of less importance was the Limited Partnership Law of 1826, which provided that such a company should take out an annual license at the cost of one half of one per cent. of the capital furnished by the special partners.[28] No income was received from this source.

Issue of Licenses and Collection of the Tax.—Under the system existing prior to 1818 the issue of licenses and the collection of the tax thereon were, with the exception of the marriage license, vested in different authorities. On the one hand, the judges or clerks of the county courts were given the right to issue. On the other hand, the sheriffs were responsible for the collection of the tax and the payment of the proceeds into the treasury. This was the rule even in certain cases where payment was first made to the clerk. As the sheriffs were local officers, not directly responsible to the state and frequently insolvent, this division of duty led to unnecessary confusion and loss.[29] This the license laws passed after 1818 endeavored to correct by providing usually that the clerks of the county court should receive and account for the tax, as well as issue the licenses. A similar provision was made to apply to the license taxes, already in force, which had previously been collected by the sheriffs.[30] The exception made to this rule in three cases—the license taxes upon note-brokers, auctioneers in Baltimore City, and dealers in lottery tickets —was due to peculiar circumstances of each, which rendered it advisable to place the administration of the law more strictly under the control of the state executive. In their form and in their penalties for violations the several laws were quite similar. The term of every license was restricted to a year; lists of those to whom licenses were issued were forwarded to the sheriffs and grand jurors for the purpose of punishing violations; and, in some cases, the lists were published in the newspapers.

[27] Md. Laws, 1825, ch. 110; 1828, ch. 95; 1824, ch. 148; 1828, ch. 95.
[28] Idem, 1825, ch. 113, section 15.
[29] Proceedings House of Delegates, 1816, p. 14.
[30] Md. Laws, 1824, ch. 148.

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Corporation Taxes.

Banks.—In 1835 a general extension of bank charters again took place, similar to that provided for in the Act of 1813.[31] On this occasion, likewise, the banks were required to pay for the privilege. The old tax of twenty cents per $100 of capital stock was continued, and in addition a new tax was imposed—the familiarly known "bank bonus."[32] This bonus was a fixed sum assessed upon each bank, payable in three annual instalments, and was required from newly chartered banks, as well as from those whose charters were extended.[33] The amount varied; for newly chartered banks it was 3¾ per cent. upon their capitals; for the extension of the charters of county banks it was 1½ per cent. upon their capitals; for the banks of Baltimore City, whose charters were extended, it was a lump assessment of $75,000 upon all of them together. The adoption of this form of tax was the result of a pressing demand for revenue. The treasury was in distress at the time, and a large immediate return was considered more important than a permanent tax, which, in the long run, would have been more productive.

In 1818 a special tax was imposed upon banks operating in Maryland without having obtained a state charter.[34] The tax was a political measure, aimed at the Baltimore branch of the United States Bank, and was almost immediately declared unconstitutional by the Supreme Court of the United States in the case of McCulloch *v.* Maryland.[35]

Baltimore and Washington Branch Railroad.—The internal improvement enthusiasm of the years from 1825 to 1840 brought into being a score or more of large stock companies, and gave the first opportunity for the extensive

[31] With the exception of those which by act of 1821 had been extended to 1845.

[32] In a few cases insurance companies were subjected to the same taxes as those levied upon banks. Md. Laws, 1835, ch. 240. Idem, 1838, ch. 289.

[33] Various bank acts of sessions 1834, 1835 and 1836.

[34] Md. Laws, 1817, ch. 156.

[35] 4 Wheaton, 316.

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application of a corporation tax. No attempt, however, was made to turn the opportunity to such an account. The policy of the Legislature was to encourage, as far as possible, all improvement undertakings, and, so far from burdening them, to relieve them of all unnecessary expense. The only exception made was in the case of the Baltimore and Washington Branch of the Baltimore and Ohio Railroad. Upon this road the heavy tax of one fifth of the gross passenger receipts was imposed;[36] but for what reasons this exception was made does not appear. The tax, indeed, was in the nature of an afterthought. The original act[37] authorizing the road made no reference to a tax of any kind. It was only in a later revision of the act that the tax provision was inserted, in compensation, apparently, for the surrender by the state of certain privileges previously reserved. In any case, this example, although a most profitable one, had no influence in the chartering of other improvement companies.

Foreign Insurance Companies.—The first extension of the corporation tax to a whole class of corporations, other than the banks, took place in 1840, when an act was passed subjecting foreign insurance companies—*i. e.,* such as did not derive their charters from the state—to a tax of 2 per cent. upon the amount of premiums received by them from policies written within the state.[38] The agent was made personally liable for the tax, besides being required to deposit a large bond. In the interest of the public debt it was provided that any company could commute its tax by investing $75,000 in any of the loans of the state or of the City of Baltimore. The purpose of the act was only incidentally financial, although later it did become a fertile source of revenue. The main incentive to its passage was the desire to foster the home insurance companies.

The Character of the Corporation Taxes.—The annual tax of twenty cents upon each hundred dollars of banking capital,

[36] Md. Laws, 1832, ch. 175.
[37] Idem, 1830, ch. 158; Supplement, 1831, 330.
[38] Idem, 1839, ch. 24.

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first laid in 1813, was a true corporation tax. The charge known as a "bank bonus" was not strictly a corporation tax, but rather what has been called "a license fee, charged for the privilege of incorporation or of increasing the capital stock of a company."[39] The early taxing of banks, however, was not used as a precedent for the taxing of other corporations. Banking for many years lay under its early odium. It was regarded as a necessary institution but an unproductive one, whose profits were out of proportion to its services, which needed restraint rather than encouragement, and from which, therefore, a contribution could be exacted with peculiar justice. Until the second quarter of the century, indeed, other corporations were too few to command attention. Moreover, although a rapid extension of this form of industrial organization then took place, it was confined in its field almost entirely to a class of enterprises—canals, railroads, mines, etc.—which the state desired to foster. Thus, up to 1840 at least, there is little to indicate any recognition of the corporation as a peculiar species of taxable property, deserving of special treatment, although, as it happened, most of the corporation charters granted were those in which the franchise and monopoly features were particularly evident. The tax upon the Baltimore and Washington Branch of the Baltimore and Ohio Railroad is a unique exception. The only other corporations so far taxed—banks and foreign insurance companies—were so treated for reasons peculiar to those corporations. The fact that the objects of the tax were corporations was hardly an element in the imposition of the taxes.

Tax on Officers' Fees.

Following a custom long in use in Baltimore City, the Legislature, in 1824, imposed a tax upon the fees of certain state officers,[40] not, however, by a license tax upon such officers, as was the case in Baltimore, but by a percentage

[39] Seligman, Essays in Taxation, p. 175.
[40] Md. Laws, 1823, ch. 146.

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tax upon the amount of fees received. Each official affected —clerks of the court of appeals, of the county courts and of the city court of Baltimore, the register in chancery, and the registers of wills for the several counties—was required to keep and make return of a list of all fees received in his office, and, when the total receipts exceeded $1500, to pay a tax of 25 per cent. upon the excess amount. There was no question of the justice of such tax, nor was complaint made as to the amount of the tax by the officials concerned.[41] The plan adopted, however, was difficult of operation as a revenue measure, and, as a remedial measure, was ill-adapted to the end desired, tending as it did to perpetuate the system of fees. After being in operation for three years, with only very partial success, the law was completely repealed.[42]

State Lotteries and Lottery Taxes.

The use of lotteries as convenient means of raising money or of disposing of property ran back into colonial days. Unrestricted freedom, however, led to abuse and fraud; and the state, at an early date, took steps to reduce the evil by prohibiting the drawing of lotteries without first obtaining the sanction of the Legislature, and by providing stringent regulations for the conduct of those so authorized.[43] The actual number of lotteries was, however, not noticeably reduced. Whenever a harbor needed improvement, whenever a church required new pews, or a village a fire engine, the first resort was almost invariably to a lottery. The purpose, however, was always of a public or charitable character. No lotteries were sanctioned for the personal profit of individuals. The people absorbed the various schemes greedily, and the aggregate capital of the lotteries drawn yearly in Maryland was estimated as high as $2,000,000.[44] Although this popular malady offered an

[41] Proceedings House of Delegates, 1825, pp. 90–95. Report of Agent, 1824; Ways and Means Committee Report, p. 102.
[42] Md. Laws, 1826, ch. 246.
[43] Idem, 1792, ch. 58.
[44] Proceedings of House of Delegates, 1825, pp. 109–111; Niles' Register, February 18, 1826.

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easy and certain means of swelling the public revenue, no attempt was made to turn it to such a purpose until 1817. This hesitancy was due in part to the moral prejudices of a certain part of the community against the principle of the lottery, but in much greater part to the excellent condition of the public finances prior to the close of the war of 1812. When the need came for more revenue, moral prejudices were quieted by the arguments that it was useless for Maryland to attempt the suppression of lotteries as long as neighboring states permitted them, and that a moral result would be better secured by legalizing them under proper regulations.[45]

In 1818,[46] after considerable discussion, the Legislature authorized the establishment of state lotteries to be conducted by salaried commissioners for the benefit of the public treasury. Private schemes already authorized were subjected to a tax of 5 per cent. upon the gross amount of prizes drawn; and thereafter private grants were rarely made. The yield of the new state lotteries was greatly restricted by the existence of several large private lotteries, especially those granted for the benefit of the Washington Monument in Baltimore and the University of Maryland.[47] These two the state now bought up, in the first instance by agreeing to pay to the directors of the monument all the yearly receipts from the state lotteries in excess of $12,000 until the monument should be completed;[48] and, in the second instance, by paying the University $5000 per year from the unappropriated avails of the state lotteries to the amount of the unexhausted privilege of the University lottery—some $41,000.[49]

By the act of 1822 dealers in lottery tickets were required to take out licenses;[50] and no tickets were authorized

[45] Proceedings of House of Delegates, 1823, p. 48; 1824, p. 102.
[46] Md. Laws, 1817, ch. 154.
[47] Proceedings of House of Delegates, 1826, p. 480.
[48] Md. Laws, 1824, ch. 125.
[49] Idem, 1827, ch. 198.
[50] Idem, 1821, ch. 232. The amount of the charge was changed frequently, but was usually $200 for Baltimore City and $50 elsewhere in the state.

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to be sold except those issued by lotteries specifically sanctioned by the Maryland Legislature.[51] The nature and the high profits of the business, however, made it very difficult to enforce this and other laws prohibiting the circulation in Maryland of lottery tickets issued by other states.[52] In 1832 the license system was radically altered. The commissioners of lotteries were authorized to grant licenses to sell tickets in Maryland's lottery system or in those of other states upon the following conditions: first, that the licensee should pay $250 for each license taken out by him, the minimum amount to be not less than $5000; and, second, that he should contract with the commissioners to draw a scheme of lotteries to produce $15,000 for the use of the state.[53]

The growing sentiment against the lottery system as an institution led, in 1836, to the adoption of a Constitutional amendment prohibiting the sanctioning by the Legislature of lotteries or of the dealing in lottery tickets after the expiration of the existing grants.[54] Another amendment five years later directed that the above prohibition should take effect immediately.[55] Thereafter no more state lotteries were drawn;[56] and the granting of new private lotteries could be effected only by the process of further amending the Constitution.

The private lottery system, however, could not be abolished immediately. Many existing grants had a considerable time yet to run, and could not legally be revoked. But, in order to hasten the termination of these, the Legislature provided that the existing grants should be transferred by the beneficiaries to the state commissioners, and drawn under their supervision until the sums authorized by the several grants should be raised.[57] These were known

[51] Md. Laws, 1819, ch. 163.
[52] Report of Commissioner on Lotteries, 1834 (Pub. Docs.); Md. Laws, 1846, ch. 109.
[53] Md. Laws, 1831, ch. 79.
[54] Idem, 1834, ch. 219. Confirmed 1835, ch. 9.
[55] Idem, 1839, ch. 31. Confirmed 1840, ch. 261.
[56] Idem, 1841 (December), ch. 330.
[57] Idem, 1835, ch. 205.

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as the "consolidated lotteries." The commissioners were authorized to contract with other persons for the drawing of such lotteries, and to issue licenses to the contractors for the sale of tickets therein at the rate of $250 per license.[58]

Extraordinary Revenue.

The receipt of extraordinary revenue continued to be a prominent feature of the state's finances, of such prominence, indeed, as to almost equal in importance the receipts from the regular revenue sources. The occasions of this extraordinary revenue were two: the payment of the war claims by the United States Government, and the distribution of the United States surplus revenue. The former of these was not altogether unexpected, and its receipt to some extent had been discounted; the latter was purely gratuitous.

The War Claims.

The "war claims" represented the demand of Maryland and other states for reimbursement out of the national treasury for the military expenditures made by them during the war of 1812. These expenditures had been made in unequal proportions by the several states; and, as the advantage thereof was a common one, it was only reasonable that the burdens should be equalized by a plan analogous to the assumption of the states' debts in 1790. The principle of reimbursement had been recognized by the United States Government at the time of the war; but the final adjustment of the various claims was not effected until some years later. The adjustment of Maryland's account was particularly difficult. In the excitement of war, when at times even the state records had to be removed from place to place on the incursion of British troops, there had been lost many valuable papers and vouchers necessary to the proper presentation of a claim.[59] As a result, the total of Maryland's claims finally admitted and paid by the United

[58] Md. Laws, 1842, ch. 50; 1842, ch. 260; 1846, ch. 118.
[59] Proceedings of House of Delegates, 1822, p. 45.

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States amounted to only $239,626.54, considerably less than the actual cost of the war to the state.[60] This money was received in instalments between 1819 and 1823, before the new taxes had become effective; and the whole sum was used for the current expenses of the treasury.[61] The above amount was intended to represent simply the actual expenditure of Maryland. In addition, the state demanded interest between the time of the original advance and the time of repayment. This, too, was later acknowledged and paid by the United States. The money received on this occasion was appropriated to the service of the public school system.

United States Surplus Revenue Distribution.

In 1837 Congress provided for the distribution among the several states of the accumulated surplus in the United States Treasury. This surplus was due to the unexpected increase in the receipts from public land sales, and its distribution was the hybrid result of a long controversy over the tariff and land policies of the Government. The Distribution Act provided for the division of $37,000,000 among the states in proportion to their representations in Congress; but, owing to the financial embarrassment of the Government before all the instalments had been paid, only some $28,000,000 was so divided. In order to obviate Constitutional objections, the quota assigned each state was not in the form of a gift, but was deposited ostensibly as a loan subject to the recall of the Secretary of the Treasury. Every one understood, however, that the several assignments would never be called for. Maryland gave the required certificates of obligation for repayment on demand,[62] and received as its quota the very considerable sum of $955,838.25. Somewhat less than a third of this money was immediately used to meet the current deficit of the treasury. The residue ($681,387.25) was deposited in

[60] Proceedings of House of Delegates, 1819, p. 107. It places cost of war at $474,516.
[61] Idem, 1822, p. 46.
[62] Md. Laws, 1836, ch. 1.

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selected banks, and the interest thereon pledged to the service of the public school fund.[63]

Growth of Expenditures.

Succeeding the war of 1812 there was a marked increase in the ordinary expenditures, due partly to the assumption of new duties by the state, but in greater degree to the more prodigal handling of the public funds. A portion of the apparent increase, however, was merely a matter of bookkeeping, and did not entail a corresponding burden upon the treasury. Thus, the expense incurred by the state in undertaking to complete the Washington Monument in Baltimore City was in return for the surrender of the lottery privileges previously granted to the monument directors.[64] Of precisely similar character was the annual donation of $5000 to the University of Maryland from 1829 to 1837. In both these cases the state finances were compensated by the increased field obtained for its own lottery system. Of analogous character was the annual appropriation of $20,000 to Baltimore City for the improvement of its harbor, this being paid out of the revenue from the auction receipts tax. The grant was in palliation for the forcible diversion of that tax from the city to the state treasury, and was discontinued upon the first opportunity. This opportunity was offered in 1834. The failure of the Bank of Maryland in that year, under somewhat odious circumstances, occasioned riots and the destruction of much private property. The sufferers were indemnified by the Legislature by an issue of state stock; and, on the plea of the city's responsibility for the damage done, the harbor appropriation was discontinued and utilized as a redemption fund for the indemnity stock now issued.[65] The fund was sufficient to redeem the stock within five years; but it was not until 1853 that the appropriation to the city was resumed.[66]

[63] Md. Laws, 1836, ch. 220.
[64] Idem, 1824, ch. 125; 1826, ch. 245.
[65] Idem, 1835, ch. 184; 1835, ch. 226.
[66] Hollander, Financial History of Baltimore, pp. 157, 158.

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Expenses of Government.

The cost of the administrative department underwent but little quantitative change, the addition of several minor officers being balanced by the abolition of the offices of auditor and trustee.[67] Salaries, with the exception[68] of the Governor's, which was increased to $4200, remained nearly stationary. Salaries were, indeed, of relatively little importance. The number of public officials was small; and, whenever possible, these were remunerated by fees. This latter method of remuneration led to grave abuse. Many officials received disproportionate incomes, and, in some cases, employed others to do the work of their offices.[69] The half-hearted effort to correct this evil by imposing a tax upon "officers' fees" was, as has been noted, without result. The state judicial system remained as reconstructed by the act of 1806, the only change of salary being an increase of $300 in that paid the chief judge of the court of appeals. The expenses of the Legislature, however, showed a marked movement upwards, owing partly to the lengthening of the annual sessions, but, in greater part, to the growing extravagance of that body in the passage of private appropriation bills. Most of these were of no permanent importance, and, in the published reports, were seldom distinguished, being simply lumped under the general label of "miscellaneous."

Colonization of Free Negroes.

During this period the Legislature engaged the state in two new enterprises—the colonization of free negroes, and the establishment of a state system of tobacco inspection. Of the enterprises already undertaken, the penitentiary was the only one to develop any importance.

The rapid increase in the number of free negroes during the first quarter of the century offered serious menace to

[67] Md. Laws, 1827, ch. 188; 1828, ch. 74.
[68] Idem, 1837, ch. 131.
[69] Report of Committee on Retrenchment, 1836 (Pub. Docs.).

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the interests of slaveholders and to some extent to the peace and order of the community. Numerous measures, of varying stringency, were proposed in remedy, the one most favored being that of African colonization. State aid was invoked, and in 1826 an annual appropriation of $1000 to the American Colonization Society was authorized,[70] but hedged with such restrictions that the society took advantage of it for only three years. In 1831 the Legislature, with the spectre of the Southampton insurrection as chief incentive, determined upon a policy of colonization upon the state's own resources,[71] but in collaboration with the Maryland Colonization Society. A board of managers was appointed to provide for the voluntary removal of all negroes then free, and for the forcible deportation of those thereafter manumitted. The sheriffs and county clerks were to supply the board with lists of freed slaves. But the board itself was to make all necessary arrangements for shipping accommodation and for places of settlement in Liberia; and it was given authority to draw upon the treasurer to the full amount of the annual appropriation for this purpose.

An appropriation of $20,000 was made for the expenses of the first year; and, for future expenses, the treasurer was authorized to issue and sell $200,000 in five per cent. state stock. To secure the interest and principal of this loan, an annual assessment of $10,116.24 was laid upon the counties, to be levied and collected in a manner similar to that used in imposing the county assessments of 1821–26.[72] The permission to issue bonds was never accepted by the treasurer, but the county assessments were regularly required; and an annual appropriation of $10,000 continued to be made up to the eve of the Civil War.[73] The whole scheme.

[70] Md. Laws, 1826, ch. 172. Repealed 1832, ch. 314.
[71] Idem, 1831, ch. 281.
[72] A small revenue was also derived after 1834 from a tax levied upon slaves brought into the state by persons already citizens or intending to become citizens of Maryland. No other persons were allowed to bring in slaves. The tax was $15 for slaves between twelve and forty-five years old and $5 for others. The proceeds of this tax were paid to the Maryland Colonization Society.
[73] Act expired 1851, but continued by 1852, ch. 202.

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however, was an unqualified failure. Compulsory emigration was seldom, if ever, enforced; and, on account of the general unwillingness of freed negroes to leave of their own accord, the number of emigrants made no impression upon the population of such negroes. These increased from 52,000 in 1831 to 90,000 in 1860.[74] The expense per emigrant was very large, averaging nearly $1000.[75]

Tobacco Inspection Warehouses.

The importance of the tobacco industry in Maryland early rendered it necessary for the interest of the trade that the character of tobacco exported should be subject to public inspection. Up to 1824 this inspection was of a semi-private character, under the direction of the levy courts of the counties, the cost being defrayed by the fees received for the service.[76] The inspectors were appointed by the Governor, but the state government assumed no responsibility and received no revenue. But the growing importance of the trade, and of Baltimore City as the principal point of shipment, rendered it desirable that the state should assume direct management of the inspection system within that city.[77] This was done by an act of 1824,[78] which provided for rented houses. But it was soon found that it would be cheaper to own them.[79] Wharf property was acquired, buildings were put up and suitable machinery was provided,[80] and from time to time additions were made to accommodate the increasing business. The initial cost of the property and buildings, as well as that of most of the later additions, was met by the issue of state stock.[81] The in-

[74] On the social aspects of the subject, see Brackett, "The Negro in Maryland."
[75] Report on Colored Population, 1840 (Pub. Docs.).
[76] Md. Laws, 1801 (November), ch. 63.
[77] Proceedings of House of Delegates, 1823, p. 48.
[78] Md. Laws, 1823, ch. 165.
[79] Proceedings of House of Delegates, 1825, p. 197.
[80] Md. Laws, 1825, ch. 159.
[81] Idem, 1826, ch. 252. Loan of $48,000. Idem, 1835, ch. 350. Loan of $30,000. The total loans negotiated for this purpose up to 1848 was $166,000.

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terest and principal of these loans, however, as also the current expenses of management, were provided for by the fees charged for inspection, but there was no attempt made to render the inspection service a source of actual profit to the treasury.[82]

State Penitentiary.

Although the penitentiary, in its primary use as a prison, was a notable advance upon the system of county jails, it disappointed the hopes of its founders. Neither as a reformatory of morals nor as a profitable financial investment was it a success, owing apparently to inefficiency in its management and to a too liberal use of the governor's power of pardoning.[83] Investigating committees of the Legislature were severe in their indictments, one declaring that it was nothing more than a grossly mismanaged manufacturing institution in which the workers happened to be criminals.[84] The penitentiary was not self-supporting. In only very few years did the current receipts equal or exceed the current expenditures. Over most of the period an annual donation from the treasury was necessary; and, at periodic intervals, the state was called upon to pay large sums for the discharge of floating indebtedness incurred by the directors,[85] or for repairs and additions to the buildings. On four occasions between 1821 and 1837 state loans were authorized for these purposes, amounting in the whole to $97,947.30.[86] The penitentiary directors were required to pay to the treasurer each year out of their net profits a sum sufficient to meet the annual interest upon these loans and to form sinking funds for their redemption. This was done at times; but, as net profits were of infrequent occurrence, the burden fell upon the state treasury.

[82] Proceedings of House of Delegates, 1824, p. 101.
[83] Niles' Register, Vol. 19, p. 296.
[84] Proceedings of House of Delegates, 1823, pp. 57–61.
[85] Idem, 1820, p. 85.
[86] Md. Laws, 1821, ch. 150; 1826, ch. 229; 1834, ch. 308; 1836, ch. 300.

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The Public Schools and the School Fund.

Although free primary education had been much discussed and much desired ever since the founding of Maryland, and with even greater earnestness since the establishment of democratic independence, it was not until 1814 that the state government offered any important encouragement to this cause. So far as there existed any public school system prior to that time, it was in development of an act of the Colonial Assembly passed in 1723.[87] Under that act a board of school directors had been appointed for each county to make the necessary arrangements for a school building and an instructor. As, however, little or no provision had been made for the accumulation of a suitable fund for the purpose, the act was almost fruitless. In only one county was sufficient money raised to found a serviceable school; in the others, the school boards continued in existence, but without sufficient funds to establish satisfactory schools. No improvement was effected up to the time of the Revolution; and, after that event, the several county foundations were, with legislative sanction, converted one after the other into private academies, offering a secondary grade of education. In this change the Kent County school was developed into Washington College, and the Anne Arundel County school into St. John's College. To both of these institutions the Legislature, in 1785, granted annual donations of considerable amounts.[88] Toward the end of the century, however, the opinion gained ground that secondary education was a more proper object of state aid than was collegiate education. The donations to the two colleges were discontinued;[89] and, thereafter, the appropriations for school purposes were divided among a number of academies and colleges. These institutions were, however, neither elementary nor free. The growing demand for a school system embodying both of these features

[87] Md. Laws, 1723; cf. Steiner, "Education in Maryland," p. 43 et seq.
[88] Idem, 1784, chs. 7 and 37.
[89] Idem, 1805, ch. 85.

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resulted, in 1813, in the dedication of the bank tax then levied to the service of free elementary education.[90]

Three years later provision was made for the application of the fund accruing from the bank tax.[91] A board of school commissioners was appointed for each county with power to draw upon the treasurer for the county's share of the tax proceeds, and with full discretionary authority as to its method of application. The act was without result, primarily because the product of the bank tax was wholly inadequate for the purpose intended; and, although certain counties were given authority to supplement the aid from the state by the levy of special taxes, the privilege was accepted in few if any cases. In 1826 a more comprehensive system was devised, moulded upon the apparently simple Lancastrian theory of education.[92] This provided for the creation of the office of state superintendent of public instruction with general supervisory power over the schools to be founded; for the appointment of local commissioners and inspectors; for the division of each county into school districts of a fixed size; and for the distribution of the county's share of the state school fund among the several districts in proportion to the number of school children. Such further money as should be necessary for the construction of buildings, etc., was to be raised by the people of each district by special taxation or otherwise. Baltimore City was permitted to establish its own system of schools, distinct from that of the state; and the share of the school fund previously allotted to Baltimore County was, thereafter, divided equally between city and county.[93] The effectiveness of the new plan was greatly diminished by the provision that it should not be operative in any county until accepted by the majority vote of the people thereof. The counties were slow to accept the offer; and, even in those counties where it was adopted, radical changes were made to

[90] See supra, p. 35.
[91] Md. Laws, 1816, ch. 256. Frederick, Washington and Alleghany counties were excepted, the portions due these new and undeveloped counties being allowed to accumulate to their credits.
[92] Idem, 1825, ch. 162.
[93] Hollander, Financial History of Baltimore, p. 128.

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meet local demands. The total effect of all this legislation was very disappointing. With the exception of Baltimore City, the school system of the state was almost worthless. The Governor's message of 1856 declared that education in Maryland, outside of Baltimore City, was "in a state of most utter and hopeless prostration."

The proceeds of the bank tax were treated by the treasurer as a separate account under the name of the "Free School Fund," and, when not immediately used, were invested in the shares of specified banks.[94] The fund was subject, of course, to the order of the school authorities of the counties; but the yearly increment was so small that, in many cases, the counties preferred to let their portions accumulate at interest in the hands of the treasurer.[95] This tax on the banks was the only regular revenue granted to the schools, but on two occasions the school funds were greatly increased by lump appropriations. These were, as already noted, the interest received from the war claims and the major portion of the money received from the distribution of the United States surplus revenue in 1837.

The "county rights" theory of government was never carried to more extreme lengths than in the distribution of the school fund. Without respect to population or to local needs, the proceeds of the bank tax were divided in equal proportions among the several counties; and, with similar logic, the donations to academies and colleges, which had at first been made with some approach to merit, were, in 1825, ordered to be so changed that each county might share equally in this bounty. Notwithstanding the opposition of the larger counties, the school fund continued to be distributed upon this principle. But, in the case of the two special appropriations, the system was so far modified as to allow one-half of these sums to be distributed according to the number of white children of school age, the other half continued to be divided equally among the counties.[96]

[94] For a time three separate funds were carried—the Free School Fund, the County School Fund and the Common School Fund. The two latter were unimportant.

[95] Report of Treasurer on Education, 1842 (Pub. Docs.).

[96] Md. Laws, 1837, ch. 285.

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CHAPTER IV.

Internal Improvements and the State Debt.

Character and Development of Internal Improvements.

The year 1826 may be conveniently taken as marking the beginning of the Internal Improvement Era in Maryland. Prior to that time there had been much earnest discussion of internal improvements, several undertakings had been launched, and some small results had been achieved; but, so far, such attempts had been strictly subordinated to other interests. At the very time when the spirit of internal improvement was most abroad in the other states, that is, in the years immediately succeeding the second English war, the violent political discussions in Maryland had prevented a rational consideration of the subject as a broad question of public policy.[1] As a result, the Erie Canal had been completed by the State of New York and several other states were busily at work digging canals and building roads before Maryland had determined upon the attitude which the state government should assume toward such projects.[2] The step once taken, however, could not be retracted; and for twenty years internal improvement was the dominating factor in the financial legislation of the state.

The movement in Maryland, as elsewhere, was the resultant of many causes, partly speculative, partly psychological, but in the main wholly rational. In their few years of independence the United States had prospered beyond all precedent. It seemed that nothing could ultimately fail, that a special Providence was in charge of all things American. Each new generation saw the population more than doubled; each year saw the limits of civilization pushed farther and farther westward, into a land of seem-

[1] Proceedings of House of Delegates, 1822, p. 45.
[2] Niles' Register, Vol. 24 (1823), p. 235.

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ingly inexhaustible wealth. Every line of business shared in this prosperity—agriculture, manufactures and commerce. But it was early and clearly seen that this great political and industrial growth would meet with a sudden check, unless there was a proportionate development of means of interior communication. Thus arose the demand for internal improvements.

Two distinct motives were involved in this demand for quicker and cheaper means of communication. In the first place, there was a large and rapidly growing section of the country—the interior region generally—isolated by nature, where development was absolutely dependent upon the construction of artificial outlets to the coast markets. Thus, the mineral products of the Alleghanies would be of little service so long as the cost of carriage should many times exceed the value of the original product. In the second place, regions well situated for commercial centers desired improved transportation facilities to and from the interior in order that their markets might be widened and their trade increased. The Erie Canal, for instance, was the making of New York City.

Nature placed Maryland in this latter category. The land area of the state was small—barely 9000 square miles—the water area so well distributed that for the major part of the state the transportation needs of the people were well supplied by this wonderful system of natural waterways, especially if supplemented by a good system of local roads. The western section, it is true, was isolated; and the development of its resources required some form of artificial transportation to the coast. But, with this exception, the effective demand for internal improvements in Maryland sprang from a desire to make the state commercially prosperous, to make Maryland the channel through which might flow the trade of the surrounding country and of the West. This western trade was the great prize to be contended for.[8] The produce of that great region could in part be floated down the Mississippi River; but, for

[8] Proceedings of House of Delegates, 1827, p. 269 et seq.

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imports, the western country was dependent upon the costly wagon transportation across the Alleghanies. The introduction of the steamboat upon the Mississippi threatened even this traffic; but, in internal improvements, the Atlantic states thought they saw a means of redress.[4] The geographical relation of most of these states to the West was not dissimilar. The trade would, therefore, be captured, and probably permanently, by whichever one of them should be able first to offer the easiest and cheapest transportation from the interior to the coast.

Thus, the demand for internal improvements was real and rational, and in the days before the railroad its logical expression was in the form of roads, canals, and improved river courses. But such undertakings were costly. Hence, the question of their financiering became an important one. Numerous private attempts had failed, or, at most, had met with only very partial success. Private capital was, indeed, either insufficient or unwilling to venture upon the bolder projects. The National Government was looked to for aid; but Congress, after having authorized the great Cumberland Road, entered upon a prolonged discussion of the constitutionality of such action, which, while keeping the friends of the American system in suspense, gave them but little practical encouragement. The responsibility seemed to have been thrown upon the shoulders of the individual commonwealths.

That Maryland delayed so long to use the power and credit of the state for this purpose was due, as noted, largely to political dissensions.[5] But back of these political dissensions, and the cause thereof, lay important economic differences. The division of the state by the Chesapeake Bay into two distinct sections early bred a feeling of distrust between the dwellers on the Eastern and those on the Western Shore. Later, a similar distinc-

[4] Report of Committee of Senate on Trade of Maryland, 1833.

[5] Proceedings of House of Delegates, 1820, p. 24 et seq. "Maryland has been wasting her energies, and destroying her best interests by domestic feuds and political struggles."

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tion and distrust developed between the northern and southern counties. This was partly the result of Maryland's being essentially a border state. The southern and the eastern, or tidewater, counties were allied in soil and economic conditions with the South; the northern and western counties were identified in general characteristics with the North. But more important than this as a breeder of sectional animosity was the gradual shifting of the economic center of the state from the southern to the northern counties, which was definitely realized in the first quarter of the last century. This was particularly exemplified in the increasing dominance of one city—Baltimore. Favored with an excellent harbor and a central position, this city thrived wonderfully. The western trade, coming across the National Turnpike to Cumberland, found its easiest outlet at Baltimore, which was also the normal point of transshipment for the important trade down the valley of the Susquehanna. Moreover, in the sudden development of manufacturing during the war period, the hilly region around Baltimore had offered such excellent water power that the bulk of the factories tended to centralize in this neighborhood. Outside of Baltimore, the most noticeable development was in the counties north and west.[6] This was due to the excellent soil of certain sections, the adaptability of others to the location of factories and mills, and the mineral wealth of the Alleghany region, then only beginning to be developed.

In contrast to this stood conditions in the southern part of the state. The Eastern Shore was barely able to hold its own from 1800 to 1825; and the lower Western Shore was beginning to suffer from the effects of the long exploitation of its soil by successive plantings of tobacco. The distress here was at times so acute that lands were being deserted; and the emigration of the younger generation

[6] Majority Report of Committee on Internal Improvement, 1832 (Pub. Docs.).

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caused an actual decrease in the population of certain sections.[7]

Economic differences bred local jealousies.[8] The people occupied themselves with politics. The Legislature had little time to spare for the consideration of industrial matters. It was only upon the passing of the Federalist party, about 1820, that a political peace was temporarily effected. Local jealousies, however, still existed and formed a stumbling block in the way of improvement agitation. The advantages of internal improvements, if constructed by private means, was generally acknowledged, although even here state jealousy sometimes entered. The fear that Virginia and the District of Columbia would profit too much from a Potomac canal led the Maryland Legislature on two occasions to refuse even its sanction to that undertaking. But, that the state treasury should become involved, with the consequent possibility of direct taxation, was an entirely different proposition. This policy of state aid, which later led Maryland to the verge of repudiation, was by no means a spontaneous movement, the product of a mad fever of universal contagion, such as it has sometimes been depicted. So far from being so, it was only by the most strenuous efforts and after a long campaign that the friends of the policy were able to persuade a majority of the counties to their way of thinking. The first bill making a large appropriation to internal improvements[9] passed the House of Delegates by the close vote of 35 to 34, and the subsequent passage of similar bills was, in like manner, closely contested.[10] This opposition was based largely on local jealousies, was often irrational, but of its existence there is no question. Moreover, notwithstanding the rosy colors in which the various proposals were painted, the possibility of their failure was by no means overlooked.

[7] Report of Committee of Ways and Means on the Finances and Internal Improvements, 1835 (Pub. Docs.).
[8] Governor's Message, 1829.
[9] Md. Laws, 1825, ch. 180.
[10] Proceedings of House of Delegates, 1825, p. 351.

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The centre of the enthusiasm was in the section bordering upon the Potomac River. Every village along that river saw in a western canal the means of its becoming a metropolis. The attitude of Baltimore toward the whole movement was for a time unsettled. The majority opinion, at first, seemed to incline toward a canal up the Susquehanna, from a fear that a Potomac canal would unduly benefit the rival cities of Maryland and the District of Columbia.[11] The assent of Baltimore to the Chesapeake and Ohio project was finally won, but then only half-heartedly, by the promise of a lateral connection from the Potomac to the Patapsco. The Eastern Shore almost unanimously opposed the whole movement. With the exception of the Delaware and Chesapeake Canal, which was distinctly planned for the benefit of through traffic, there was little possibility, or, indeed, demand for internal improvements in this section. Any indirect advantage which it might derive from extensive works on the Western Shore was overborne by the fear of direct taxation and by the feeling of jealous distrust, which was the heritage of the Eastern toward the Western Shore.

Granting, however, the value of internal improvements to the state and the wisdom of the policy of state aid, the choice of improvements to be aided did not admit, at first, of much dispute. Indeed, the topography of the state pointed out so clearly the direction which such improvements should follow that the broad outline of all future development was laid within a few years of the close of the Revolution. This outline consisted of a three-pronged system of waterways radiating from the Chesapeake Bay as a centre; eastward, across the Delaware Peninsula; northward, up the valley of the Susquehanna; westward, with the course of the Potomac. The early history of the attempts to carry out these improvements is of little importance in itself; but a brief review may serve to place later developments in a clearer light.

[11] Niles' Register, Vol. 25; Baltimore American, 1825.

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The Delaware and Chesapeake Canal.

This was among the earliest of such projects to be proposed in the country, forming a favorite topic of discussion even in colonial days. Three states—Pennsylvania, Delaware and Maryland—expected much from the commercial effects of such a connecting link between the Chesapeake and Delaware bays, while the National Government favored it for its supposed strategic value in times of war. After many futile beginnings, actual work was begun in 1824,[12] the state of Maryland having subscribed $50,000 to the stock of the company formed for the purpose. The canal was opened for traffic in 1829, and developed a considerable local business; but, as it accommodated only boats of a shallow draft, it never became a commercial thoroughfare as had been anticipated, and never made any financial return to the state.

The Susquehanna River.

Internal improvements had their beginning in Maryland with the incorporation of the "Proprietors of the Susquehanna Canal" in 1784.[13] The Susquehanna River was navigable for small craft well into the State of Pennsylvania, except for a stretch of some ten miles below the Pennsylvania line. This obstacle the company proposed to overcome by building a canal around the unnavigable portion of the river, from Love Island to tidewater. Work progressed very slowly. The company got into financial difficulties, and in 1800 the state came to its aid with a loan of $30,000.[14] In the course of the next few years the ten-mile canal was completed, and some minor improvements were made to the river bed, but the trade value of these enterprises was very slight. The loan received from the state was never repaid.

[12] Niles' Register, Vol. 26, p. 180.
[13] Md. Laws, 1783, ch. 23.
[14] Idem, 1799, ch. 17.

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The Potomac River.[15]

Long-meditated plans for rendering the Potomac River a navigable waterway culminated in 1784–5, when the "Potomac Company" was chartered by the states of Virginia and Maryland.[16] This company proposed to clear the channel of the Potomac River for navigation as far as Cumberland, building canals where necessary around obstructions due to falls and rapids. The history of the company is one of failure, notwithstanding the performance of some rather remarkable engineering feats and the actual opening of a considerable portion of the river. In 1819 it gave up the struggle after having expended more than $700,000 and accumulated a debt of $170,000. The enterprise had been launched almost entirely as a private venture, the State of Maryland subscribing originally only £5000. But, in various times of financial embarrassment, the state had made further subscriptions,[17] until in 1820 its total holdings of stock amounted to $120,444.44 in addition to a loan of $30,000 advanced the company in 1814.[18] With the exception of a small dividend of £457 in 1812, the state had received no return whatever upon these investments.

With the exposure of the Potomac Company's affairs, in 1819, all hope was abandoned of making the Potomac River navigable, and attention turned to another scheme—the building of a continuous canal parallel to the river. By the first proposition, this was merely to extend from tidewater —*i. e.*, Georgetown—to Cumberland, which, it was estimated, could be done for $1,574,954. Virginia immediately incorporated the Potomac Canal Company to carry out this plan; but the Maryland Legislature refused its confirmation. The only apparent reason for this action was the jealous fear that the District of Columbia would benefit unduly from a canal terminating at Georgetown.

[15] For the detailed account of the early history of the attempts to build a canal up the Potomac River, see Ward's "The Early Development of the Chesapeake and Ohio Canal Project."

[16] Md. Laws, 1784, ch. 33.

[17] Cf. Md. Laws, 1795, ch. 51.

[18] Md. Laws, 1812, Resolution 6; 1818, Resolution 29; 1819, Resolution 11; 1822, Resolution 43.

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Meanwhile, events were shaping for a bolder enterprise. The idea of a continuous canal from the Chesapeake Bay to the Ohio River—a canal which would enable the products of the great West to come to the ocean without unloading—had been broached some years before. But the expense of such an undertaking daunted its advocates, and up to 1823 there seemed little likelihood of aid from the National Government. The internal improvement party had dominated Congress for a term of years; but so far a strict-construction President had prevented action. In the fall of 1823 matters changed. President Monroe cast aside his Constitutional scruples; and it appeared reasonably certain that the Chesapeake and Ohio project, if properly presented, would receive national sanction and aid. At a convention of the friends of the canal it was estimated that the eastern section, from Georgetown to the coal banks above Cumberland, could be constructed for $2,750,000. Virginia responded immediately, January 27, 1824, by incorporating a company on the lines laid down by the convention. A year later, the Maryland Legislature confirmed the act, but with the express reservation of the right to construct a lateral canal from the District of Columbia to Baltimore City.[19] No state subscription to the stock of the new company was authorized by this act.

Thus, up to 1825, the state of Maryland had expended in various schemes of internal improvement more than a quarter of a million dollars.[20] This was a very considerable sum at the time, but the expenditure had been spread over a number of years; and, what was more important, the money

[19] January 31, 1825. Md. Laws, 1824, ch. 79.

[20] Besides the subscriptions and loans to the three canal enterprises, aggregating $230,000, the state had also, in 1809–10, made small subscriptions to the stocks of two turnpike companies and to one manufacturing company. These were: Baltimore and Fredericktown Turnpike Co., $10,000; Baltimore and Yorktown Turnpike Co., $5000; Union Manufacturing Co., $10,000. All three of these investments continued to pay occasional small dividends. The large state subscriptions to the capitals of several banks, as already described, are not regarded as internal improvement investments. They were simply safe means of investing the surplus funds of the treasury.

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had been drawn directly from current revenues. No debt had as yet been incurred.

The Internal Improvement Loans. (1826–1840.)

The act of March 6, 1826,[21] making conditional appropriations of $1,700,000 to various improvement undertakings, definitely accepted the policy of state aid to internal improvements, and also gave the first sanction to the use of the public credit for this purpose. To render the act easier of passage, the aid offered was so distributed as to placate as far as possible all sections of the state. The sum of $500,000 was subscribed to the Chesapeake and Ohio Canal Company;[22] $500,000 was pledged to construct a connecting canal from Washington to Baltimore, when such should be declared feasible and a company duly organized; a similar sum was promised to any company that might be formed to build a canal from Baltimore to Yorkhaven, Pennsylvania; and, finally, $200,000 was pledged for the improvement of rivers and lowlands on the Eastern Shore. To raise the money thus appropriated the treasurer was directed to negotiate a five per cent. loan, redeemable after 1860. Of these four authorized appropriations, only the first was ever made.[23] The projects of lateral canals from Baltimore to the Potomac River and from Baltimore to Yorkhaven were temporarily dropped; and the indefinite plan of bettering the Eastern Shore navigation was never carried beyond the surveyor's chart, if, indeed, it was ever intended to be carried farther. The Chesapeake and Ohio Canal itself languished for a time; and, when finally begun in 1828, the whole complexion of the movement had been changed.

The report of General Bernard, in 1826, with its estimate of over $22,000,000 for a Chesapeake and Ohio canal,

[21] Md. Laws, 1825, ch. 180.

[22] The certificates of stock and debt of the old Potomac Company held by the state were also subscribed for stock in the new company.

[23] Md. Laws, 1827, ch. 104.

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added to the cost and uncertainty of a Baltimore connection, quenched what little hope the people of that city had ever had in this vast project. Still anxious, however, to save the valuable trade of the West, they sought a substitute, and found it in a newly invented form of transportation—the railroad.[24] A company was formed to construct such a road westward from Baltimore, with the aim of ultimately reaching the Ohio River.[25] A charter was readily obtained;[26] and, upon an appeal to the state for aid, the Legislature subscribed $500,000 to the stock of the Baltimore and Ohio Railroad Company, at the same time revising the similar appropriation to the Chesapeake and Ohio Canal Company so as to bring both these grants under the same conditions.[27] These conditions exacted that the two works should follow certain prescribed routes, later much changed; that each company should have bona fide subscriptions of certain amounts precedent to the state's subscriptions; and finally, that each company should agree, if requested, to accept five per cent. bonds, irredeemable for fifteen years, in payment of the state's subscriptions. These conditions were complied with; and, on the same day, July 4, 1828, both works were formally begun.

The aims of these two undertakings were almost identical, their lines of construction almost parallel. That the two were by their nature destined to be rivals was not overlooked by certain of their projectors; and mutual antagonism was at times acute. But the essential character of the rivalry was not generally grasped. Canal transportation had the support of long precedent, and the steamboat was an assured success. The railroad, on the other hand, was an experiment. There was a prevalent belief that the two undertakings had different fields of work; that the canal was adapted to the carrying of the bulky mineral and agricultural products of the Alleghany region,[28] while the rail-

[24] Report of Baltimore and Ohio Railroad, 1830 (Pub. Docs.).
[25] Proceedings of House of Delegates, 1827, p. 268 et seq.
[26] Md. Laws, 1826, ch. 123.
[27] Idem, 1827, chs. 104 and 105.
[28] Report of Committee of Ways and Means on Finance and Internal Improvements, 1835 (Pub. Docs.).

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road would find its field of usefulness in the transport of lighter and more perishable goods. It was the existence of this belief in the restricted field of the railroad, together with the necessity of compromise on the part of both lobbies in order to present a united front, that caused the legislative treatment of the two companies to be more or less impartial.

The construction of the railroad proceeded rapidly. By April 1, 1832, it was in operation as far as the Point of Rocks on the Potomac River, sixty-nine miles from Baltimore.[29] From the very first the new road proved an economic success, developing the country through which it passed and being offered many times the freight it was able to handle. The canal company, with its more cumbrous organization, moved more slowly, although all might have been well had not its overcaution and jealousy of the railroad caused it to take a fatal step. The natural passageway to the West for both canal and railroad lay along the valley of the Potomac River, and both companies had planned to follow this course. The passage up the valley, however, was so narrow in places, particularly at the Point of Rocks, that the canal company, claiming a prior grant of the route, contested the claim of the railroad to the use of the river bank at this place. The matter was finally settled, in 1832, by the court of appeals in favor of the canal company, and, in the following year, by a compromise on the part of both companies.[30] But, by this time, irreparable injury had been done the canal enterprise by the consequent delay in construction. The friends of the Chesapeake and Ohio Canal had, from the beginning, placed great trust in the aid of the Federal Government, hoping, indeed, to shift the full responsibility upon the nation's shoulders. This trust had been rewarded by a congressional subscription of $1,000,000 to the company's stock in 1828; and, if rapid progress had been made upon the work, it is probable that more would have been forthcoming. But, by 1832, when

[29] Reizenstein, Economic History of the Baltimore and Ohio Railroad, p. 26.

[30] 4 Gill and Johnson, 52. Reizenstein, op. cit., pp. 29–32.

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the canal was ready to resume work, the situation had greatly changed. The internal improvement party in Congress had lost its power; the President had become unfriendly; and it appeared certain that no further aid could be obtained from this source. Moreover, during these critical years, the railroad was gaining converts, while enthusiasm for the canal had so waned that private assistance was not forthcoming. The state made another small subscription of $125,000—in five per cent. fifteen-year bonds—to Chesapeake and Ohio stock.[81] But this was insufficient even to meet the accumulated indebtedness of the company, and further appeal was made.

Meanwhile, the success of the Baltimore and Ohio Railroad had inspired other enterprises of the same kind, in the two most important of which the state treasury became involved. These were the Baltimore and Washington and the Baltimore and Susquehanna railroads, both of which, it is to be noted, paralleled the routes of previously planned canals.

The Baltimore and Washington Railroad started as an independent enterprise;[82] but, meeting with ill success, the Baltimore and Ohio Railroad Company undertook its construction as a branch of its main line.[83] The Legislature subscribed $500,000 to the new stock issued therefor, with the provisions that this subscription should be considered a "separate and distinct stock;" that the interest of the state in the road should never be pledged as security for a mortgage; and that one fifth of the gross passenger receipts from the Washington Branch line should be annually paid to the state. The road was quickly completed, proved immediately successful, and the provision for the tax on passenger receipts became a lucrative source of revenue to the treasury. It was, indeed, the only one of the state's ventures in internal improvements that turned out to its immediate financial advantage.

[81] Md. Laws, 1833, ch. 239.
[82] Idem, 1827, ch. 170; 1828, ch. 139.
[83] Idem, 1830, ch. 158.

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The Baltimore and Susquehanna Railroad started favorably with a capital of $450,000, of which the State of Maryland had subscribed $100,000,[34] but it immediately encountered a formidable obstacle in the refusal of the Pennsylvania Legislature to allow it to be carried through the state. Pennsylvania was busy with its own schemes of improvement, and resented this attempt of Maryland to strike at the heart of its system[35] and divert trade to Baltimore which, it was thought, belonged legitimately to Philadelphia. The requisite permission was finally granted in 1834, but the delay had so discouraged most of the stockholders that they ceased to pay their instalments when called on.[36] The Maryland Legislature offered to guarantee a bond issue of $300,000;[37] but the company was unable to float a loan on the conditions required in the act, and applied for more material help.[38]

Thus, up to the end of 1833, the state treasury had not been seriously embarrassed by its ventures into the field of internal improvements. The appropriations made thereto had resulted in the authorization of a debt of $1,725,000, a third of which had not yet been contracted. The form and provision of the several subscription acts were much alike. In each the state reserved the privilege of paying its promised subscription by a direct transfer of state stock to the company concerned, leaving to it all difficulties of marketing the stock. The rate of interest was, with one exception, 5 per cent. The exception was in the case of the subscription of $100,000 to the Baltimore and Susquehanna Railroad Company in 1831, when an easier money market permitted the issue of 4½ per cent. stock. The same rate was originally fixed for the loan

[34] Md. Laws, 1827, ch. 72. Cf. Report of Committee on Internal Improvements, 1834 (Pub. Docs.).

[35] Letter of President of Baltimore and Susquehanna Railroad Company, 1829, December 31 (Pub. Docs.).

[36] Memorial of Baltimore and Susquehanna Railroad Co., 1834 (Pub. Docs.).

[37] Md. Laws, 1832, ch. 220.

[38] Report, Baltimore and Susquehanna Railroad Co., 1833.

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authorized in 1834 for the Baltimore and Washington Branch Railroad, but the directors of the road being unable to dispose of it at the price required by the act, the Legislature later converted it into a 5 per cent. stock.[39] Occasionally, the state had exceeded the regular duties of a stock-holder by advancing the instalments on its holdings of stock before due and before the other shareholders had paid.[40] In such cases, however, special security had been exacted for the advance.

The Legislature of 1834 granted applications for aid from two improvement companies—the Chesapeake and Ohio Canal and the Baltimore and Susquehanna Railroad.[41] The promoters of the railroad, discouraged by the opposition of Pennsylvania, had proceeded very slowly with the work; and the road had been carried as yet but a third of its way to Yorkhaven. But there was little doubt felt that it could be completed in a short time at a comparatively small expense,[42] and the Legislature agreed to loan the company a million dollars. The canal presented a more serious proposition. After having expended $4,000,000 in building one hundred and six miles,[43] the company was now bankrupt. It was evident that the canal would be of little value unless extended to Cumberland, at least; and Cumberland was eighty-six miles away. Aid from the United States Government could no longer be relied upon; and private capital had lost its ardor for canal investments. The state treasury seemed the only resource.[44] The Company's surveys and estimates demonstrated that the remaining section of the canal could be finished at an expenditure of $2,000,000, or less; and, in this belief, the Legislature authorized a loan

[39] Md. Laws, 1833, ch. 33.
[40] Idem, 1831, ch. 224; 1833, ch. 33; 1833, ch. 105.
[41] Idem, 1834, ch. 241.
[42] Memorial of the Baltimore and Susquehanna Railroad Co., 1834 (Pub. Docs.).
[43] Memorial in behalf of the Chesapeake and Ohio Canal Co., 1834 (Pub. Docs.).
[44] Committee of House of Delegates on Chesapeake and Ohio Canal Co., 1834 (Pub. Docs.).

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to the Company of as much of $2,000,000 as might be necessary.[45]

In making these loans, apparently ample measures were taken to guard the state against loss. It was provided: (1) that each company should deposit a covenant with the state, pledging its whole property and resources for securing the payment of interest and principal of the loan made to it; (2) that each company should pay its whole net receipts to the treasurer annually, to accumulate until he should have a fund sufficient to pay the state loans when due; (3) that the Baltimore and Susquehanna Railroad Company should have called in all unpaid subscriptions of its private stock-holders and have deposited a bond with the treasurer in penalty of $100,000 as a special security for the interest due the state before the completion of the road to Yorkhaven. To meet the loans, when demanded, the treasurer was authorized to issue and sell 6 per cent. stock redeemable at any time after 1860, provided he should receive not less than 15 per cent. premium. The full amounts of the loans were demanded by the two companies almost immediately. Fortunately, the money market was active; and the treasurer was able to dispose of the state stock at an average premium of 17 per cent.[46]

The loans, however, completely failed to attain the objects aimed at. The Baltimore and Susquehanna Company, with its portion, was able to carry its road only two thirds of the way to Yorkhaven. The loan to the canal company was even less successful.[47] Of the $2,000,000 loaned by the state, only $121,000 was devoted to new construction, the residue being used to defray outstanding debts and to repair the old works. In less than a year the company again

[45] The passage of this act was secured by providing that in certain cases the expected profits should go to the school fund. The Governor's Message for 1835 (page 4) says: "The systems of Internal Improvement and General Education are united . . . and the whole state as with one voice approves the measure."

[46] Report Ways and Means Committee relative to State Funds, 1838 (Pub. Docs.).

[47] Report of Joint Committee on Chesapeake and Ohio Canal, 1833 (Pub. Docs.).

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appeared before the Legislature as a suppliant, acknowledging that its former estimate had been so far short of the actual cost that it would require an additional $3,000,000 to complete the canal to Cumberland.[48]

The Legislature was not in a position to quibble over the legality of things done. The alternative of further aid was the complete failure of the canal, which meant not only the loss of all the state investments therein, but also the permanent saddling upon the treasury of an annual interest charge of $151,250—a burden which the finances were in no condition to bear. But, preliminary to another loan, it was necessary to thresh over again the whole policy of internal improvements with a view to reconciling conflicting interests and establishing finally the attitude of the state government toward all such enterprises. As a result of this discussion, a well-rounded plan of internal improvements was developed. The old project of a canal to the Ohio was definitely abandoned; and efforts were to be confined solely to completing it as far as Cumberland. Perfect confidence was felt that, if the coal banks of the Alleghanies were once reached, the canal would be immediately productive. The old fear still lingered that the cities of Virginia and of the District might profit unduly from this work; and, to quiet this fear, and to win the favor of Baltimore, the moribund project of a lateral canal from the Potomac River to that city was revived. In addition, Annapolis was to be cared for by a similar lateral connection to the Potomac. The western trade, it was thought, could be taken care of by the extension of the Baltimore and Ohio Railroad.[49] That road had been carried by now as far as Harper's Ferry, and was demonstrating its economic value. Financially, it was less successful, and to carry out the plan the state would have to aid the railroad as well as the canal. Finally, the Eastern Shore was to have a share

[48] Minority and Majority Reports of Joint Committee on Chesapeake and Ohio Canal, 1835 (Pub. Docs.).

[49] Report of Ways and Means Committee on the Finances and Internal Improvements, 1835 (Pub. Docs.).

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in the state's bounty. The early plans to improve lowlands and navigable rivers of that section had never been carried out, although repeated appropriations had been made. But now a bolder plan was developed—to construct a railroad throughout the whole length of the Eastern Shore, which, by numerous branch lines, would bring every part of that section into communication with the rest of the country.[50]

An act embodying these several features and appropriating a total of $8,000,000 was passed by the Legislature in extra session, June 4, 1836.[51] The money was to be raised by an issue of 6 per cent. fifty-year bonds, which, however, were not to be sold at less than 20 per cent. premium. To dispose of what was then such a large issue, commissioners were appointed to negotiate the sale abroad. The $8,000,000 was subscribed to the stock of the several companies in the following proportion: $3,000,000 to the Chesapeake and Ohio Canal Company, $3,000,000 to the Baltimore and Ohio Railroad Company, and, as soon as formally organized with sufficient capitals to complete, $1,000,000 to the Eastern Shore Railroad Company, $500,000 to the Annapolis and Potomac Canal Company, $500,000 to the Maryland Canal Company (*i. e.*, the lateral canal from Baltimore City to the Potomac River).

A strong but unsuccessful effort was made to include in this act a provision for the establishment of a state bank, or, failing this, a real estate bank to which the state should lend its credit, on the lines laid down by certain southern and western states.[52] Both plans were fostered primarily by the planters of the lower Western Shore, who, suffering from exhausted soil, believed that paper money, or at least loans on farm lands at low interests, would restore their prosperity.

So important was the lateral canal from the Potomac River to Baltimore considered that the subscriptions to the

[50] Cf. Md. Laws, 1835, ch. 338.
[51] Idem, 1835, ch. 395.
[52] Reports of the Committee on Finances and Internal Improvements and of the Select Committee on a Real Estate Bank; contra, Report of Ways and Means Committee, 1835 (Pub. Docs.).

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Chesapeake and Ohio Canal and the Baltimore and Ohio Railroad were made contingent upon the organization of the Maryland Canal Company with sufficient capital to complete the proposed work. Furthermore, each of the several companies was required to guarantee on the state's subscription a preferred dividend of 6 per cent. This latter condition was speedily fulfilled, although the canal company hesitated for a time to give its assent because of a clause in the act by which it surrendered certain claims to the Potomac Valley between Harper's Ferry and Cumberland. The first condition, that requiring the organization of the Maryland Canal Company, was also fulfilled in the course of the next few months, but only after some rather flagrant financial juggling, the details of which it is difficult to uncover. Surveys were made, a company was organized, and a certificate showing a subscribed capital of $1,000,000 presented to the treasurer and approved by the attorney-general. The company, however, was apparently nothing more than a "dummy" hatched up by the friends of the loan act for the sole purpose of fulfilling the conditions of the appropriations and with no intention of ever building the canal.[53] The charge of fraud was repeatedly made,[54] to which the only reply was that the certificate had been duly accepted by the state's officers.

The method adopted to float the loan likewise led to legal questioning. The spring of 1836, when the act was passed, was a time of general prosperity. The money-market was active; and the Legislature had thought the requirement of a 20 per cent. premium on a 6 per cent. bond to be perfectly feasible.[55] But by the time the commissioners were ready to proceed to Europe[56] a great change had taken place. The crisis of 1837 was developing rapidly

[53] The list of subscribers as given in the certificate shows that of the total of 16,105 shares subscribed 16,000 had been taken by three men. Scharf says these men were of no financial standing in the city. History of Maryland, III, p. 208.

[54] Report of Ways and Means Committee on Subscriptions of State, etc., 1836 (Pub. Docs.).

[55] Governor's Message, 1839 (Pub. Docs.).

[56] Idem, 1836.

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in the country; and, abroad, the deluge of American state bonds, combined with the irresponsible attitude of several states toward their obligations, had caused a rapid decline in American credit, to such an extent that the commissioners were unable to dispose of their securities at a price anywhere near that demanded by the terms of the act. Failing in this mission, the commissioners adopted another method, carrying out the spirit if not the letter of the law. A contract was entered into directly with the two principal beneficiaries of the act—the Baltimore and Ohio Railroad and the Chesapeake and Ohio Canal companies—by which they agreed to accept state bonds to the full amount of their respective subscriptions, and to pay the treasurer in cash the premium of 20 per cent. required by the act. Such a contract was of doubtful benefit to the state. There was no reasonable hope that the companies concerned could dispose of the state bonds on better terms than the commissioners could have done, and every reason to believe that, being hard pushed for funds, the bonds would be sacrificed to the injury of the state credit. In such case, the 20 per cent. premium to be paid the state would have to come out of the companies' capital accounts; and, assuming the correctness of the estimates to complete the work, the loans would fall that far short of accomplishing their purposes.[57]

After a prolonged discussion, the Legislature refused to contest the legality of these contracts, or of the organization of the Maryland Canal Company. Admitting the irregularities attaching to these actions, it was none the less true that the treasurer had already made the subscriptions in question, and that the Chesapeake and Ohio Canal Company, on this authority, had entered into numerous contracts. To annul the act meant embarrassment and further delay to the canal, when expedition appeared more than ever necessary.[58] Moreover, if the contracts were carried

[57] Report of Ways and Means Committee on Validity of Contracts made by the Commissioners, etc., 1835; Report of Committee on Internal Improvements, 1834 (Pub. Docs.).

[58] Md. Laws, 1837, Resolution 26.

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out, the state would at least receive as premium a sum aggregating $1,200,000.

But the contracts were not carried out, nor did any of the expected results come to pass. Six per cent. currency bonds proved unsalable; and the Legislature, a year later, provided for their conversion into 5 per cent. fifty-year sterling bonds, payable interest and principal in London,[59] under the belief that 5 per cent. sterling was an equivalent interest to 6 per cent. current money and was much more acceptable to foreign investors. Moreover, the act which provided for this conversion radically altered the provisions of the original act. The state relinquished entirely its demand for a 20 per cent. premium, but stipulated that each company should guarantee to meet, for a space of three years, the interest on the $3,000,000 loan for its benefit. Any advantage that the state might obtain from such a stipulation was considerably diminished, however, by the further provision that, in the exchange, $3200 worth of the new sterling stock should be given for each $3000 worth of the old currency stock, the state's interest as a shareholder in the respective companies not being correspondingly increased.

This change in the form of the state loan was of no immediate benefit. The foreign as well as the home market refused Maryland securities except at prices ruinous to the companies' interests and to the state's credit. The Baltimore and Ohio Railroad Company, instead of selling its portion, formed an arrangement with Baring Brothers and Company of London by which, upon security of state bonds, that firm was to advance such sums to the railroad company as the progress of the road required and dispose of the state bonds at the most favorable times. By this arrangement and by the resort to the issue of "stock-orders"—*i. e.*, scrip issued upon the security of Baltimore City Stock[60]—the railroad company was able to tide over

[59] Md. Laws, 1838, ch. 386.

[60] In 1836 Baltimore City subscribed $3,000,000 to the Baltimore and Ohio Railroad Company; but inability to find a market for municipal stock prevented the city from meeting its promised instal-

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these critical years. The state bonds delivered to the Chesapeake and Ohio Canal Company were treated with less respect. Pressed with heavy debts, the canal company hypothecated the bonds with banks and brokers, who sold them for whatever they would bring, thus sacrificing the state's credit and diminishing the resources of the company. This money was soon spent; and the company again acknowledged its estimate of the cost of completing the canal to have been wrong. In a spirit of resigned desperation, the Legislature of 1838 made a further subscription of $1,375,000 to the stock of the Chesapeake and Ohio Canal Company.[61] As before, the 5 per cent. fifty-year state bonds authorized for this amount were issued directly to the company; and, as before, the bonds were sold at a discount and the money was expended without final result.

In this lavish appropriation of the state's credit the Baltimore and Susquehanna Railroad Company was not forgotten. That company, with the aid of previous state grants and large loans from Baltimore City, had completed its road to Yorkhaven, but it was then discovered that to make the road productive it would have to be extended still further, to the Susquehanna River itself.[62] In 1838 Baltimore City agreed to loan the company $250,000 more on condition that the state would duplicate this advance. The Legislature assented; and an issue of $500,000 three per cent. stock, redeemable after 1890, was authorized. Of this issue, one fifth was retained by the treasury as a sinking fund and the

ments. In this extremity the railroad company accepted in lieu of cash instalments city stock at par, deposited it with trustees, and issued printed orders in denominations from $1 to $100, fundable into this deposited stock at the will of the holder. Bolstered up by the agreement of the city to receive them in payment of municipal dues, these orders passed freely into circulation until overissue brought depreciation. In 1842 the city withdrew the former privilege of receiving them for city dues; and, by funding and purchase, these "stock orders" were soon retired. See Hollander, Financial History of Baltimore, p. 181, for a more detailed account of these orders.

[61] Md. Laws, 1838, ch. 396.

[62] Governor's Message, January 2, 1839; Report of Committee on Internal Improvements upon the Baltimore and Susquehanna Railroad, 1838 (Pub. Docs.).

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remainder sold to the highest bidders for the benefit of the railroad company.[63] This use of discount bonds by the state proved reasonably successful—three per cent. bonds netting $63 on the $100. But, notwithstanding this, the method was not repeated. Still the road was not completed; and, in the following session, a further loan[64] of $750,000 in five per cent. (1890) bonds was authorized. The bonds being difficult to market at the interest rate fixed, the rate was shortly changed to six per cent.[65] To assure the passage of this act by the Legislature, Baltimore City agreed to surrender in favor of the state all liens it had upon the railroad. Thus, the state was left with a mortgage upon the whole property and a preferred claim upon all profits.

This completed the series of state loans for the benefit of the Baltimore and Ohio Railroad, the Chesapeake and Ohio Canal and the Baltimore and Susquehanna Railroad—the most important of the improvement undertakings in Maryland and the ones in which the public finances became most deeply involved. But, in fulfilment of promises to other sections of the state, the Legislature made several lesser appropriations to other enterprises. The largest of these appropriations was that of a million dollars to the Tidewater Canal Company. By the first internal improvement loan act,[66] a half million dollar subscription was promised on certain conditions to any company that might be formed to construct a canal from Baltimore to Yorkhaven. The Susquehanna and Patapsco Canal Company was immediately incorporated to carry out this project.[67] As, however, the conditions required by the act were not fulfilled, the state appropriation was not made and the whole matter languished. The construction of the Baltimore and Susquehanna Railroad over a parallel course quenched somewhat

[63] Md. Laws, 1837, ch. 302.
[64] Idem, 1838, ch. 395.
[65] Idem, 1839, ch. 20. Out of these bonds, the treasurer was to retain a sum sufficient to cover arrearages of interest up to January, 1840, due by the company to the state on former loans.
[66] Idem, 1825, ch. 180.
[67] Idem, 1825, ch. 200.

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the former ardor, but did not discourage the project entirely. In 1836 the Susquehanna and Patapsco Canal Company was revived under the name of the Tidewater Canal Company;[68] and this, in conjunction with a Pennsylvania company, undertook the construction of a canal up the Susquehanna River, to connect at Columbia with the important Pennsylvania canal system. The Baltimore connection, however, was abandoned; and the southern terminus was fixed at Havre de Grace. By 1839 the work was well under way, and the Maryland Legislature granted a loan of $1,000,000 in five per cent. (1865) sterling bonds to the two companies.[69] The rights and property of the old Susquehanna Canal Company of Maryland were acquired by the new promoters.

The other improvement appropriations were of little financial importance, and were all in fulfilment of the $8,000,000 act of 1835, which, in addition to the principal subscriptions to the Chesapeake and Ohio Canal and the Baltimore and Ohio Railroad, had contemplated smaller, but still considerable, grants to other improvement enterprises—the Maryland Canal (to connect Baltimore with the Chesapeake and Ohio Canal), the Eastern Shore Railroad and the Annapolis and Potomac Canal. At the time of the grants none of these three companies had at most more than a paper existence. The Maryland Canal Company never got beyond this stage. The Eastern Shore Railroad, originally planned as a sectional sop, and for which there was no effective demand, met with but little greater success. Only a small fraction of the state subscription of one million dollars was ever called for; and, finally, in 1840, provision was made for winding up the affairs of the company by the state's agreeing to buy out the interests of the other stock-holders and shoulder the whole loss.[70] The project of a canal from Annapolis to the Potomac River[71] was speedily abandoned;

[68] Md. Laws, 1835, ch. 340.
[69] Idem, 1838, ch. 416.
[70] Idem, 1839, ch. 323.
[71] Idem, 1828, ch. 189.

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and in 1837 there was substituted a plan for a railroad from Annapolis to Elkridge to connect with the Washington Branch of the Baltimore and Ohio Railroad.[72] To this undertaking the state subscribed $300,000; and, as in the other subscriptions under the act of 1836, the railroad company was required to give the state a preferred claim of six per cent. upon profits. During the succeeding three years the full amount of this subscription was paid by the state.[73]

In 1840 the long series of improvement loans came to an enforced end. The Legislature, although weary of the task it had undertaken, would have continued its borrowing for the sake of the Chesapeake and Ohio Canal at least, if borrowing had been any longer possible.[74] But the credit of Maryland was hopelessly ruined. Small offerings of six per cent. state bonds were being sold as low as thirty-five per cent. discount; and an attempt to market a large amount of such bonds would have forced the price indefinitely

	Amount of State Bonds Issued.	Form of Investment.		
		Common Stock.	Bonds.	Preferred Stock.
Chesapeake and Ohio Canal	$7,194,667	$625,000	$2,000,000	$4,375,000
Baltimore and Ohio Railroad	3,697,000	500,000		3,000,000
Baltimore and Washington Branch	500,000	550,000[75]		
Baltimore and Susquehanna Railroad	2,232,045	100,000	1,879,000	
Tidewater Canal	1,000,000		1,000,000	
Annapolis and Elkridge Railroad	219,378			299,378
Eastern Shore Railroad	151,744			86,862
Chesapeake and Delaware Canal		50,000		
Totals	$14,994,834	$1,825,000	$4,879,152	$7,761,240

[72] Md. Laws, 1836, ch. 298.
[73] Idem, 1838, Resolution 26; 1839, ch. 12.
[74] Public Document, EE, 1839.
[75] The conditions exacted by the state for this subscription were so strict that this was practically a preferred stock.

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lower.[76] Within ten years the state debt had been increased from almost nothing to more than $15,000,000, of which all but $240,000 had been incurred for the purpose of internal improvement. The table on the preceding page itemizes the debt according to the objects for which incurred, and also shows the form and amount of the state's investment in each of the improvement companies aided.

In view of the financial ill-success, temporary at least, of the several state-aided improvement companies, the character of the state's investments became a matter of importance. The early investments had been in the simple form of stock subscriptions with no other security than that of the ordinary shareholder. As, however, the policy of state aid began to assume greater proportions, with an attendant increase in the public debt, the Legislature became more sedulous in the guarding of the public investments. Thus, in the $3,000,000 loan act of 1834, the advances made to the Chesapeake and Ohio Canal and the Baltimore and Susquehanna Railroad companies were in the form of subscriptions to the bonds of those corporations. As a bondholder, however, the state was denied a voice in the management; and, in certain instances, this lack more than counterbalanced the additional security thereby received. This was especially so in the case of the Chesapeake and Ohio Canal. This canal was rapidly becoming the peculiar concern of Maryland; and it was, therefore, desirable that the state should have a controlling influence in the management of an undertaking in which it had the dominant interest, both financial and economic.[77] In consequence of this desire, the $8,000,000 loan act of 1836 attempted to combine the management and security features by providing that the various subscriptions then authorized should be regarded as "preferred stock," upon which the state should have a prior claim to a six per cent. dividend. This dividend was not to

[76] Public Document, V, 1844.

[77] Reports of Ways and Means Committee in reference to the Chesapeake and Ohio Canal; Report of Ways and Means Committee, 1838 (Pub. Docs.).

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begin until three years after the date of subscription, three years being the time estimated as necessary for the completion of the several undertakings. In the mean time, however, the two largest beneficiaries—the Baltimore and Ohio Railroad and the Chesapeake and Ohio Canal companies—were required to pledge their properties for the payment of six per cent. upon the amounts now subscribed to each. By these means it was expected that the state would be relieved of all necessity for providing for the interest on the $8,000,000 loan. Thereafter, all investments of the state in internal improvement companies took one of these forms—preferred stock or bond subscriptions.

The care thus displayed in guarding the investment of the public money had little immediate effect. At first, most of the companies did make an effort to pay interest on their bonds; and, from this source and from occasional dividends, the state for some five years derived a considerable revenue. But, with the exception of the Baltimore and Ohio Railroad, none of the companies were actually earning a sufficient net profit for this purpose; and, therefore, the payments to the state could not continue. Nevertheless, it was useless for the state, in the case of those companies in which it was a bondholder with the legal right of foreclosure—the Chesapeake and Ohio, the Baltimore and Susquehanna and the Tidewater companies—to exercise that right, when it had neither the money nor the credit with which to conduct such undertakings.

The Sinking Fund.

Minor Loans.

The redemption of the minor bond issues was provided for with greater care than was the case with the much larger issues for internal improvement purposes. In the former instance, indeed, the chief canon of a sound sinking fund policy was consistently observed, *i. e.*, the appropriation to the sinking fund of a specific, recurrent revenue. In this manner the tobacco warehouse loans were secured by

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the revenues from tobacco inspection;[78] the monument loan, by a proportion of the lottery receipts;[79] the penitentiary loans, by the future profits of that institution;[80] the university loan, by the pledge of an annual appropriation of $500 from the treasury. With the exception of the loans for the penitentiary, where profits were uncertain, these provisions were ample. The indemnity stock, issued in 1836, as has been noted, was almost immediately retired by the use for that purpose of the $20,000 harbor appropriation to Baltimore City.

The Improvement Loans.

A method of treatment entirely different was accorded the improvement loans. In these cases no attempt was made to assign any periodic revenue to the service of a sinking fund. The Legislature was satisfied to provide, in one way or another, the nucleus of a sinking fund, and to trust to interest accumulation and to Providence for its ultimate and sufficient enlargement. Even then no consistent policy was followed. The only principle of treatment at all common to the several loan acts was the almost invariable provision that premiums from the sale of state stock should be for the use of the sinking fund. Therefore, an account of the sinking fund practice, as regards the improvement loans, is little more than a catalogue of unrelated items.

The first improvement loan act, that of 1827, established a sinking fund by appropriating for that purpose the dividends from the state's holdings of turnpike stock and also all dividends from the investments now ordered to be made. By a supplementary act it was further directed that a sum equal to ten per cent. of the loans to be negotiated should be taken from the unappropriated money in the treasury and set aside for the sinking fund.[81] All these provisions were speedily repealed, and the money accruing thereunder

[78] Md. Laws, 1826, ch. 252; 1828, Resolution 57; 1834, Resolution 40; 1835, ch. 350.
[79] Idem, 1829, ch. 165.
[80] Idem, 1821, ch. 150; 1826, ch. 229; 1834, ch. 308; 1836, ch. 300.
[81] Idem, 1827, chs. 104 and 105.

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was used for current expenses.[82] The act making a state subscription to the Baltimore and Washington Branch assigned the revenue from the heavy passenger receipts levied upon the road to the purposes of a sinking fund.[83] Such an appropriation would have been more than sufficient; but this feature of the law does not appear to have been regarded. The $8,000,000 loan act of 1836 directed that if the premium from the sale of the state stock was not sufficient to establish a sinking fund of $500,000 the difference should be supplied from the bonus taxes upon the banks.[84] This act, however, underwent so many revisions and mutilations that the sinking fund feature was neglected.

Another method was adopted in the $3,000,000 loan of 1834. Here it was enacted that the companies benefited by the loan should pay all their net profits into the state treasury until a sum should be accumulated sufficient to amortize the loan now authorized.[85] As, however, one of the companies concerned—the Chesapeake and Ohio Canal —never earned any profits, and the other—the Baltimore and Susquehanna Railroad—earned none for several years, no substantial benefit accrued to the state treasury. Still another and more successful policy was followed on the occasion of the three per cent. loan to the Baltimore and Susquehanna Railroad Company in 1837. This being an intentional use of discount bonds, from which no premium could be expected, it was ordered that one fifth of the bonds issued should be retained by the treasurer as a sinking fund.[86]

In addition to these several efforts to provide sinking funds without directly burdening the treasury, appropriations, aggregating $211,000, were made to a general sinking fund out of the money received from the redemption of the United States three per cent. stock.[87] The direction to the

[82] Md. Laws, 1828, ch. 192.
[83] Idem, 1832, ch. 175.
[84] Idem, 1835, ch. 395.
[85] Idem, 1834, ch. 241.
[86] Idem, 1837, ch. 302.
[87] Idem, 1834, Resolution 51; 1834, ch. 299.

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treasurer to carry to the credit of the sinking fund any annual surplus over $12,000 was of no effect, because there were no surplusses.[88]

The system of separate sinking funds was continued up to 1834, the treasurer maintaining and entering each as a separate account. In the year named, however, the several accounts were ordered to be consolidated.[89] The treasurer was the sole custodian of the sinking fund. In 1826 a short-lived board of public works was created as a managing body for all internal improvement matters, and, among other duties, was given charge of the "internal improvement sinking fund."[90] No such fund was then in existence; nor did it make its appearance until after the board of public works had been abolished. Money, once credited to the sinking fund, was immediately invested by the treasurer without other limitation upon the character of the investment than that it should be in "some safe and productive stock." In practice, such investments were confined almost entirely to state stock of various descriptions.

Notwithstanding the random manner in which the sinking fund was created, a considerable fund was, nevertheless, accumulated. In 1841 it amounted to $1,159,438. Its weakness was that there was no provision for its increase other than its own interest accretion. The sinking fund was never violated,[91] although, in the period of greatest treasury distress, there was occasional talk of diverting its interest increment to other uses.[92] The chief safeguard of the fund itself was that it was largely composed of state stock, which was practically unsalable at the time, even if there had been a desire to dispose of it.

INTEREST ON THE DEBT. GROWING TREASURY DISTRESS.

Although the series of loan acts began as early as 1827, it was not until 1835 that the resulting interest charge

[88] Md. Laws, 1833, Resolution 38.
[89] Idem.
[90] Idem, 1825, ch. 166.
[91] Idem, 1838, ch. 390.
[92] Public Document, S, 1843.

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became a matter of importance, and not until 1837 that the presence of this item in the budget began to occasion alarm. This was due primarily to the fact that, as already explained, the improvement companies in which the state had invested did, for a time, make considerable returns to the state in the form of dividends on stock or interest on bonds; and, during that time, the receipts from this source greatly reduced the burden of the interest charge. This is shown in the appended table, which gives by years the total interest due on the state debt, the receipts into the state treasury from improvement companies for dividends and interest, the receipts from the tax on the Washington Branch, and finally, the difference between the sum of the second and third items and the first item, which constitutes the net excess of annual interest on improvement loans above the receipts from improvement investments.

	Interest on Improvement Loans.[93]	Receipts from Improvement Cos. for Dividends and Interest.	Tax on Washington Branch Railroad.	Excess of Interest Over Receipts.
1833	$27,654	$6,108		$21,546
1834	46,537	8,786		37,751
1835	91,784	27,343		64,441
1836	108,737	108,118	$31,034	41,585
1837	256,387	182,925	33,248	40,214
1838	266,597	179,641	38,537	48,419
1839	278,445	143,460	37,369	97,616
1840	573,291	48,030	40,296	484,965

The figures in the last column show the relative unimportance of the interest burden up to 1839. Such as it was, it was not altogether unexpected. The prevalent optimism had greatly underestimated the time necessary for the construction of canals and railroads; but, nevertheless, it was realized that some time would be necessary before such works could become productive, and that, in the interval, the state would have to bear at least a portion of the interest upon its loans.[94] Excluding this one item, the finances ap-

[93] The interest on other than improvement loans did not exceed $15,000 per year, nearly all of which had been provided for by special funds.

[94] Public Document, O, 1839.

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peared to be in excellent condition. The revenue system, as revised at the close of the war of 1812, provided amply for the ordinary expenditures; and it was calculated that, as this new demand upon the treasury was to be temporary only, it could be met by temporary expedients. The state held a considerable amount of marketable investments—United States and bank stock—which, if necessary, could be used for this purpose. Moreover, there was always the possibility of extraordinary revenue being received, such, for instance, as would come from the scheme urged by the Maryland Legislature for the sale of the United States public lands and the distribution of the proceeds among the several states.[95]

This policy of depending upon casual revenues worked successfully for a time. It 1832–3 the redemption of the United States 3 per cent. stock held by the state put the treasury into possession of $335,104—a sum sufficient to cover for the next few years the deficiency due to interest payments.[96] Between 1835 and 1837 this deficiency was met by the taxes laid upon the banks and by the novel plan of selling the reserved privileges of the state to subscribe at par for a specified number of shares in certain of the local banks. As the stocks of many of these banks, especially those of Baltimore City, were at a considerable premium, the privilege to subscribe at par was a valuable one, which the banks themselves were usually willing to purchase.[97] To some extent this privilege had already been accepted by the state as a means of investing the treasury surplus. But the number of "reserved shares," as they were called, had accumulated much faster than was needed by the state as a means of investment, and, by 1835, this unsubscribed reservation was in excess of a million dollars. Altogether,

[95] Vide Md. Laws, 1832, Resolution 28; 1835, Resolution 94; 1841 (March), Resolution 2.

[96] Idem, 1833, Resolution 69; 1834, Resolution 39.

[97] Idem, 1836, ch. 154. An attempt to raise money by this method of selling "reserved shares" had been made as early as 1818, but without success; Md. Laws, 1817, Resolution 51; 1818, Resolution 27; and was suggested as early as 1800. Proceedings of House of Delegates, 1800, p. 37.

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the sum of $50,000 was derived from the sale of such "reserved shares." Of similar character was the sale to the Merchants' Bank[98] of the charter right of the state to appoint a director in that institution. By these several expedients the treasury was so relieved that when, in 1837, the state received nearly a million dollars as its quota of the United States surplus revenue distribution, it was considered feasible to donate the larger portion of this sum to the public schools.[99]

Up to 1838 there was no serious questioning as to the ultimate success of the various improvement undertakings in which the state had invested so heavily. Occasional doubts could not but obtrude; but these were too unpalatable to be long harbored. This attitude of mind is well illustrated by a paragraph from a report of the ways and means committee of the House of Delegates in 1837: "In anticipation of the future productiveness of our great works of improvement, it has been the policy of the state to rely on casual revenues to supply our annual deficiencies. As the day is almost at hand when these anticipations are to be realized or disappointed" we "deem it inexpedient to change that policy by a resort to a system of permanent taxation which might create an overflowing treasury." Again, the same committee says in 1839: "If, for the present, it [direct taxation] can be postponed it is the duty of the Legislature to do so."[100] The policy thus expressed was steadily adhered to by the Legislature. Little or no consideration was given to proposals looking toward the permanent enlargement of the revenues. The tax on the Baltimore and Washington Branch of the Baltimore and Ohio Railroad was important but isolated. Of the other two taxes imposed between 1831 and 1841—the bank bonus tax and the tax on foreign insurance companies—the first was not a permanent measure and the second was of little importance as a revenue producer.

[98] Md. Laws, 1833, ch. 115.
[99] Idem, 1836, ch. 220.
[100] Public Document C. C, 1839.

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But this failure to provide against the possibility of an unsuccessful outcome of the state aid policy is not wholly attributable to a mere senseless optimism. It was due in great degree to popular absorption in political matters to the neglect of the public finances. The political quiet following upon the demise of the Federalist party in the early twenties had not been of long duration. Almost immediately there began an active agitation for constitutional reform—for a change in the state's constitution, which as it stood permitted the smaller counties to dominate the larger counties and Baltimore City. The party of reform grew in strength; and finally, in 1837, an amendment to the constitution was adopted.[101] Under this the delegates to the lower house were apportioned among counties according to a graduated scheme of population, which, while more equitable than the old system, limited the representation of the largest county to five members. The electoral college for the choosing of senators was abolished and each county, as also Baltimore City, was assigned one senator. The executive council of five members was also abolished; and, in its place, there was substituted a secretary of state. These important changes, however, were secured only after a long and bitter struggle, culminating in 1836 in a dispute that almost precipitated armed insurrection. The effect of this political controversy was to lessen interest in improvement legislation. The Legislature was not able to devote a commensurate portion of its time and attention to the important loans which it was sanctioning and to the general problems of the treasury.

The critical years began in 1840. The interest charged jumped from $291,888 to $585,819; and at the same time the receipts for interest and dividends from the various improvement companies dropped off with equal suddenness. There were only two funds remaining which could be used to meet this demand—the bank stock and the large portion of the United States surplus revenue deposited in the banks. The interest of this latter money had been pledged to the

[101] Md. Laws, 1836, ch. 197; confirmed 1837, ch. 84.

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public schools, but no specific pledge had been given as to the form in which the principal sum should be maintained. The first attack upon this tempting fund was the withdrawal therefrom of $120,000 and the substitution of a 5 per cent. state bond of equal value.[102] This would insure an equivalent interest to the school fund, provided the state should continue to pay interest. Immediately after this, however, the whole residue of the deposits was used for the payment of interest on the public debt; and as a compensation it was ordered that the receipts from the tax on the Baltimore and Washington Branch Railroad should thereafter be paid to the school fund.[103] The treasurer was also ordered to sell the state's holdings of bank stock; but, owing to the depressed condition of the market, this was not done. Finally, the endeavor was made to provide for the interest falling due in 1841 by the authorization of a temporary loan of $500,000 from the banks.[104] Of this amount, however, barely $400,000 could be obtained. Thus, by 1841, all the available treasury funds had been exhausted, and it was no longer possible to borrow even on temporary loan. Every expedient had been resorted to short of taxation, and this or repudiation was the alternative now presented.

[102] Md. Laws, 1838, Resolution 77.
[103] Idem, 1839, ch. 33.
[104] Idem, 1841 (March), Resolution 3.

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CHAPTER V.

The Suspension of Interest Payments (1841–1848).

The treasurer was unable to meet the quarterly interest payment falling due on January 1, 1842. Then succeeded a period of six years in which the state continuously failed to meet promptly and fully the interest on its debt. The Legislature waited until the eve of the treasury's exhaustion before providing any measures in relief. The session of 1840 discussed at some length a bill for the taxing of real property; but the members were unwilling to commit themselves.[1] Immediately upon adjournment, however, an extra session was called for special deliberation upon the matter of a property tax. An act was finally passed, 1841, "for the general valuation and assessment of property in this state, and to provide a tax to pay the debts of the state." The rate of the tax was 20 cents per $100 of property. The bill passed the House of Delegates by a vote of 53 to 22.[2] The opposition was not sectional, and much of the objection was to the details rather than to the principle of the bill. The property tax, however, proved insufficient to the needs of the treasury. Other taxes were necessary, and during the next half-dozen years the tax system of the state was entirely reconstructed.

Further Extension of Taxation.

The General Property Tax.

The act of 1841[3] provided for the assessment of all real and personal property within the state, and then enumerated certain kinds of property which should be considered as

[1] Proceedings of House of Delegates, 1840, pp. 298–398.
[2] Idem, 1841 (March), pp. 43–44.
[3] Md. Laws, 1841 (March), ch. 23.

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coming within this provision. The most interesting feature of this enumeration was the specific inclusion therein of (1) debts secured by judgments, decree, mortgage, bond, bill of exchange or promissory note from solvent debtors; (2) public loans of all descriptions, except those created by the United States Government; and (3) shares of stock in banks or other stock companies, whether incorporated by Maryland or by some other state.

Further description of the taxable forms of property can be best suggested by a statement of the forms that were exempt. These were: property belonging to the United States, the state of Maryland, or any county or city within the state; the property of charitable and literary institutions, churches,[4] county schools, cemeteries; produce of land in hands of producer; provisions for consumption of owner; plantation utensils; working tools of mechanics and hand manufacturers, and the produce thereof while in the possession of the producer; wearing apparel; fish unsold in possession of fishermen; household manufactures; bonds, mortgages and other securities belonging to any bank or other incorporated institution, the capital stock of which was made taxable by this act; goods belonging to non-residents in the hands of agents in this state; and, finally, the property of all persons who might be assessed for less than $200.[5] No deduction was made for debts and no provision made for the exemption of book accounts.

For convenience of assessment, Baltimore City was divided into six districts and the larger counties were similarly subdivided; but the majority of the counties were treated as single districts. Three assessors were appointed by name in the act for each district; but vacancies were to be filled by the levy court or commissioners in the counties, and by the mayor and council in the City of Baltimore. The assessors of each district, acting conjointly, were to ascertain, list and value all the taxable property within their

[4] This was changed by Act, 1846, ch. 175, so as to exempt only forty acres of land and the personal property used by such institutions.
[5] By Act of 1841 (December), ch. 116, reduced to $50.

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jurisdiction, and to make a detailed return thereof according to forms and directions supplied by the state treasurer. To aid in the discovery of property and of its ownership, the registers of the land offices and the clerks of the courts, respectively, were to furnish lists of land certificates ready for patent and of all recorded property alienations. Furthermore, the assessors were given power to compel owners to disclose their property under oath.

All property was to be assessed at its full cash value. In the case of real property and of slaves this valuation was to be made only by the assessors; but, in the case of other personal property, when the owner returned an account of his personalty, the owner's appraisement was to be accepted. No attempt, however, was made to fix by law a uniform assessment value for slaves,[6] silver plate, etc., as had been the practice in the earlier assessment laws. But a somewhat analogous system was introduced by a supplementary act of the next session, by which silver plate worth over $50 and watches were subjected to a special and higher rate of taxation than that imposed upon other property: 2½ per cent. in the case of plate, and specific rates for watches ranging from $1 to 12½ cents according to the character thereof.[7] With this exception, no attempt was made towards equalization, either between sections or between individuals, a feature so prominent in the earlier assessment system. Corporation stock was valued by the assessors simply at what they considered its cash value to be.

Appeal from the assessors' valuation lay to the Levy Court or Commissioners of the County, who could increase or abate the assessment and add or exclude property, and could do this even without an appeal. To exercise this authority in Baltimore, a special board of three members, known as the appeal tax court, was created. The members of this court were local officers, appointed by the Mayor and Council of the city. Further appeal could be taken to the State Court of Appeals; and provision was made for expe-

[6] Committee on Assessment of Slaves, 1841 (Pub. Docs.).
[7] Md. Laws, 1841 (December), ch. 297.

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diting such cases. The decision of the higher court upon this class of appeals, however, was to concern only questions of the law and not questions of fact, not, for instance, the amount of an assessment.

The present law did not contemplate periodic revaluation. The assessment, as now made, was to remain the basis for future levies, with such additions of unlisted property as the collectors of the counties should be able to discover.[8] Deductions for loss or destruction were to be made, on request, by the county commissioners, levy court, or appeal tax court of Baltimore City, as the case might be.

The Taxing of Stock and Bonds.

The collection of the property tax in most of its phases developed so many difficulties, because of the existing social and political conditions, that its treatment is postponed to a special section. The methods adopted for the taxing of stock, however, obviated these difficulties, and require separate notice.

The modern system of taxing stock to the issuing corporation was developed in all its details in a series of laws passed between 1841 and 1848. The beginning of the system was made quite naturally with the portion of the stock of local corporations owned by non-residents, in. which cases assessment would be very difficult and collection almost impossible, if the attempt was made to deal with the individual stock-holder. The act of March, 1841,[9] therefore, directed each corporation in the state to return to the local assessor a list of its non-resident stock-holders, with the respective amounts of their holdings. The assessor was then to value such stock at its full value; and the tax thereon was to be collected directly from the corporation in question, unless paid previously by the stockholder. To insure correct returns, the assessor was given free access to the stock books of a company, whenever he should make the demand. At the next session of the

[8] Md. Laws, 1845 (December), ch. 116.
[9] Idem, 1841 (March), ch. 23.

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Legislature[10] the above provisions were extended to the stock held by residents as well as by non-residents.

Thus far, however, the tax was still assessed to the individual stock-holder, and was paid by the corporation only when a dividend was declared, or, as provided a little later, when profits were earned.[11] The act of 1848 endeavored to correct former weaknesses and render the system complete.[11a] It was directed that the local tax officials should value the stock of each corporation within their district, after having given opportunity for the proper officer of the corporation to submit evidence of the true value of the stock; that the assessed value of the real and personal property of said corporation should then be deducted from the total stock valuation, and the residue be thereafter used as the basis upon which state and local taxes should be levied. The state tax was to be paid by the corporation to the state treasurer, whether or not dividends were declared or profits earned, and without regard to the place of the stock-holders' residence. The local taxes, however, had to be collected, as formerly, from the stock-holder; but the companies were required to furnish lists of such persons to aid in the collection of the local taxes, and were permitted to assume the payment thereof by agreement with the county or city officials.

The bond issues of Baltimore City,[12] and, at first, even those of the state,[13] were treated quite the same as the stock of private corporations, the register of the city, and the state commissioner of loans, respectively, being required to withhold the amount of the tax from the semi-annual payments of interest. Such stock was presumably assessed at its par value. Later, however, special provision was made for the valuation of state stocks, those bearing 6 per cent. interest being assessed at par, those bearing

[10] Md. Laws, 1841 (December), ch. 281.
[11] Idem, 1843, ch. 289.
[11a] Idem, 1847, ch. 266.
[12] Idem, 1841 (December), ch. 281; 1844, ch. 234.
[13] Idem, 1841 (December), ch. 281.

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5 per cent. sterling at 90 and so on;[14] and the commissioner of loans, who disbursed the interest, was permitted to draw on the treasurer only for the amount of such interest less the amount of the tax.

Up to 1847 bonds or other evidences of debt issued by private corporations were assessed to, and the tax collected from, the holder thereof. But, in that year, the tax on interest-bearing bonds, as previously with the tax on stock, was ordered to be paid directly to the treasurer;[15] and, as also previously provided for the issues of stock, the corporation was required to render a list of the holders of its bonded debt to the local authorities, in order to assist them in the collection of the local taxes.

Income Taxes.

A tax upon incomes other than those derived from the ownership of property naturally suggested itself as a necessary complement to a general property tax. The only Maryland precedent for such a tax was the short-lived and unsuccessful levy of an income tax during the Revolution. The law as now passed was comprehensive, but not very burdensome.[16] In it provision was made for a tax of 2½ per cent. upon all salaries and emoluments, whether of private or public office, and upon all incomes arising from a profession or other employment. Exemption was made of the salaries of judges and clergymen, and of all incomes of less than $500 annual value.[17]

As far as possible, the tax on income was to be collected at the source whence the income had its rise. In the case of public salaries this could be easily done by the direction that the treasurer should retain the amount of the tax out of each salary paid by him and give a receipt therefor, which the regular collector would accept in settlement.

[14] Md. Laws, 1844, ch. 172, applies to non-resident stock-holders, and 1845, ch. 170, to resident holders.
[15] Idem, 1847, ch. 266.
[16] Idem, 1841 (December), ch. 325.
[17] Reduced by Act 1843, ch. 307, to $300.

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Corporations, firms, and individuals with salaried employees were similarly required to withhold the amount of the tax and pay it directly to the state treasury. In those forms of income where this procedure was not possible the sworn statement of a person as to the amount of his income was to be accepted by the assessor as final. The provision for assessment, when no personal statement was returned, as well as the provisions for levy, collection and appeal, were similar to those made in the act for the taxing of real and personal property, and led to similar difficulties in operation.

By later acts particular forms of income were subjected to special treatment, either because they had not been included in the general income law of 1842, or because it was desired to increase the rate of the tax with regard to them. Four classes of incomes were thus selected.

Ground-Rents.—Instead of the usual rate of 2½ per cent., ground-rents were directed to be taxed at a rate equivalent to what would be the property tax on the principal of which the rent was the annuity.[18] Under this rule, each $100 of principal would be taxed 25c., which, figured on the basis of the annual rent, would be at the rate of 4⅛ on a 6 per cent. ground-rent, 3⅛ per cent. on an 8 per cent. ground-rent, etc. This method of rating, however, was speedily displaced; and, thereafter, ground-rent was taxed as other income, but without the exemption privileges allowed other incomes of less than $300.[19] Later, the law taxing ground-rents was declared unconstitutional by the court of appeals; and the taxes paid thereunder were refunded.[20]

Collateral Inheritance.—By an act of 1845 the income of property passing to collateral heirs was treated in a manner similar to that provided for the more usual forms of income by the act of 1842. All estates passing by inheritance to other than parents, wife, husband or lineal descendants, whether by will or under the intestate laws or by transfer to take effect in possession after the death of the grantor,

[18] Md. Laws, 1841 (December), ch. 329.
[19] Idem, 1842, ch. 294. Repealed 1844, ch. 251.
[20] Idem, 1847, Resolution 27.

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were made subject to the 2½ per cent. tax. Estates of less than $500 were exempt. Every executor and administrator was required to pay the above tax to the register of wills of his county within thirteen months of the taking out of letters. Property might be sold for the purpose, if necessary, and the tax was a lien upon all real estate subject thereto.[21]

Tax on Officers' Fees.—The income tax bore unequally upon the incomes of public officials. Those who were paid fixed salaries suffered, while those whose remuneration was in the form of fees escaped entirely. A simple percentage tax upon the amount of fees received in an office was unworkable, as had been demonstrated in the attempt made to levy such a tax in 1824. A law was now passed[22] which endeavored to avoid this difficulty by imposing specific taxes upon the more important of the fee offices. The officials selected for the tax were the clerks of the court of appeals, the clerks of the several county courts and Baltimore City Court, the register in chancery, and the registers of wills in the various counties; and the amount of the tax was roughly apportioned to the supposed lucrativeness of each office. The lowest payment required was $10—from the clerk of the court of appeals of the Eastern Shore—and the highest was $1500[23]—from the clerks of the Baltimore County Court. The size of this latter payment indicates how productive many of these fee offices were.

Tax on the Commissioners of Executors, etc.—In every case of the granting of letters of administration, after June 1, 1845, the commission allowed by the orphans' court to the administrator or executor was made subject to a tax of 10 per cent. upon the commissions so allowed.[24] The court was to determine the amount of the commission within twelve months of the granting of the letters; and the tax was to be then fixed and paid within sixty days of the return

[21] Md. Laws, 1844, ch. 237; 1847, ch. 222.
[22] Idem, 1844, ch. 302.
[23] Idem, 1846, ch. 253.
[24] Idem, ch. 184.

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of the inventory.[25] When a legacy was left to an administrator or executor, by way of compensation and in lieu of his demanding a commission, such legacy was to be regarded as a commission and be taxed accordingly.[26]

A precisely similar tax of 10 per cent. was levied upon the commissions allowed to trustees and receivers. Every trustee and receiver was required to render an account of his trust estate within six months of the filing of his bond; thereupon the commission was to be determined and the tax paid within thirty days. The receipt given for this payment was to be accepted by the collector of the income tax as a credit for so much of the regular income tax bill, rendered by him to such receiver or trustee.[27]

License Taxes.

The field of the license tax was already so fully occupied that there was little room for a further extension of this principle. Little alteration was made in the form of the existing license laws, the only important change being the exaction of a special license tax of $50 from those selling merchandise in Baltimore City, who were not resident citizens of the state, nor established in business therein.[28] Three new forms of licenses, however, were introduced, although none of them were of much fiscal importance.

Brokers.—By the act of 1842 stock-brokers were required to obtain from the clerk of the county court annual licenses costing $1000; and exchange- and bill-brokers were charged at an even higher rate, $3000 each.[29] The result was that no applications were made, and the rates had to be greatly

[25] Md. Laws, 1845, ch. 391.
[26] Idem, 1847, ch. 230.
[27] Idem, 1844, ch. 187, and 1845, ch. 166.
[28] Idem, 1845, ch. 216. The charge was originally $300, but this was reduced in the following year to $50 (1846, ch. 249). The following were exempt: sellers of agricultural and home manufactured products, and manufacturers of leather, iron and tobacco (1847, ch. 231).
[29] Idem, 1841 (December), ch. 282.

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modified.[30] These were now fixed for stock brokers, $75; exchange-brokers, $100; bill-brokers, $50.[31]

Foreign Insurance Companies.—Agents of foreign insurance companies—*i. e.*, those not incorporated by the state—were subjected to an annual license tax of $100; and, for each company represented, the agent had to take out a separate license.[32] The treasurer was to publish in the newspapers annually a list of licensed agents with the names of the companies they represented. This new enactment did not do away with the former tax on the premiums received by such agents, this latter tax being increased from $2 to $3 per $100 of premiums so received.

Public Exhibitions, etc.—Theatricals, circuses, and other exhibitions of the kind were customarily licensed by the local authorities in whose jurisdiction they claimed to be; and the tax now imposed was additional to such local license. The charge varied with the character of the exhibition, the maximum rates being for the counties $30 for a general license, for Baltimore City $3 per night.[33]

Stamp Tax.

The stamp tax of 1845[34] was the most bitterly denounced of all the taxes imposed during this period.[35] But, as such a tax was exceedingly productive, easy to collect, and as, moreover, its chief burden fell upon the commercial interests of Baltimore City and not upon the rural districts, it was continued in force for several years. The form of the law was simple. It required that specially stamped paper, prepared by the government, and for which a charge was made, should be used in drawing up any of the following instruments of writing: bonds, obligations or promissory notes above $100 in value, not issued by a bank, and bills of exchange or other evidences of debt above $100, by

[30] Governor's Message, 1842.
[31] Md. Laws, 1842, ch. 257.
[32] Idem, 1845, ch. 167; 1846, ch. 357.
[33] Idem, 1841 (December), ch. 194.
[34] Idem, 1844, ch. 280.
[35] Governor's Message, 1845.

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whomsoever issued. By a supplement of the following year, this requirement was extended to mortgages of over $100 and deeds and bills of sale, when the amount exceeded $200.[36] The amount of the charge for the stamp varied from 10c. to $6, according to the expressed face value of the instrument. Another act of 1846 made similar provision for the payment of a stamp duty upon each lottery ticket sold within the state, the maximum charge for such stamp being 20 cents.[37]

Other Taxes.

Officers' Commissions.—Beginning in 1844, specific taxes were laid upon all commissions issued to elected or appointed officials whose offices were derived from the state. All commissions were thereafter forwarded to the clerks of the counties, who delivered them to the appointees, and, at the time of delivery, collected the tax thereon.[38] The amount of the tax varied from $1 for minor officials to $300 for the sheriff of Baltimore City.[39]

Policies of Insurance.—All companies or individuals authorized to make insurance, fire, life, or marine, were required to pay $1 for each policy written by them. Payment was to be made directly to the treasurer of the state; and the $1 tax could be commuted into a semiannual payment of $500. Failure to accept the act on the part of any company or individual was to be penalized by requiring its policies, thereafter, to be printed upon stamped paper.[40]

Protests.—By an act of 1842 the fee allowed the notaries public for protesting notes, drafts, bills of exchange and checks was doubled; and the excess over the former fee was, thereafter, paid into the state treasury.[41]

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[36] Md. Laws, 1845, ch. 193; 1846, ch. 61; 1847, ch. 262.
[37] Idem, 1845, ch. 92.
[38] Idem, 1843, ch. 284; 1844, ch. 260.
[39] Idem, 1847, ch. 54.
[40] Idem, 1845, ch. 366.
[41] Idem, 1841, ch. 280; 1844, ch. 196.

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Difficulties of Collection.

The act of 1841 entrusted the levy and collection of the property tax entirely to the local authorities—*i. e.*, the commissioners or levy courts of the counties and the mayor and council of Baltimore City.[42] These bodies were directed to levy annually upon the assessable property within their jurisdictions the specified state tax, and to appoint the necessary officials for its collection. The only limitations were that such collectors should be bonded to the state for the prompt collecting of the tax, and that each member of the respective local bodies should be individually liable to the state for the performance of his required duties. At an earlier period this policy of transacting state business through the local bodies presented no difficulty, the members of such bodies being appointed by the state executive and responsible thereto. During the preceding fifteen years, however, the movement for local autonomy had gained considerable headway. It had begun in 1827, when Baltimore County had been granted the privilege of electing a board of county commissioners with all the powers formerly vested in the levy court and the commissioners of the tax.[43] By 1842 this method of local administration had been extended to fifteen counties; and, in four others, the old levy courts, although retained in name, were made elective. The result of this change was that the local authorities became more heedful of local opinion and less responsive to unpopular directions from the central government. During the period now being considered this was a matter of importance. The action of the Legislature in levying a direct tax, although assented to in theory by probably a majority of the people, was nowhere popular in practice, and, in some sections, was opposed most bitterly.

The assessment of property having proceeded more slowly than anticipated, the time for the payment of the

[42] Collectors were named in the act for Prince George County, Anne Arundel County and Howard District, but vacancies were to be filled by the levy court or commissioners of the county concerned.
[43] Md. Laws, 1826, ch. 217.

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tax of 1841 had to be extended till March 1, 1843.[44] Even with this extension, however, the result of the first year's levy, as, indeed, of those of 1842 and 1843 also, was very disappointing. In some counties the tax was not even levied. In others the levy was made, but either no collectors were appointed or those appointed refused to serve. In few was the collection of the tax enforced with any spirit. In face of this emergency the Legislature was irresolute. Stringent penalties were ordained against negligent officials; but, in the infrequent cases of actual prosecution, the local courts and juries hesitated to condemn. The Legislature itself showed the utmost leniency in holding such officials to account. An effort was made to insure the collection of the tax by enacting that for purposes of collection the state tax should be combined with the local taxes.[45] The result was simply that, in the delinquent counties, no taxes at all were levied.[46]

It is difficult to estimate just how widespread was the antitax sentiment. Somerset, Worcester and Calvert counties were the most flagrant offenders. From these no returns whatever were made for some three years. Elsewhere the opposition was more scattered, and usually contented itself with obstructive measures, such as intimidating the collectors.[47] But the failure of some counties to pay their portions of the tax disheartened others, and made the enforcement of the tax laws seem unjust. The antitax advocates gained heart. Public meetings were held where resolutions were passed in which it was declared that, as the arrears of interest were accumulating with such hopeless rapidity, and as the tax was a great oppression to the people, the effort to pay off the debt by such a method should be abandoned. Open repudiation was somewhat disguised in the plan offered for distributing the state's interests in internal improvement companies among

[44] Md. Laws, 1841, ch. 116.
[45] Idem, 1842, ch. 269, and others.
[46] Governor's Message, 1843.
[47] Niles' Register, February 3, 1844.

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the holders of the state bonds in settlement of their claims.[48] In some sections the matter was made a political issue, and antitax candidates were put forward.[49] But, notwithstanding these expressions of disapproval, it would appear that the majority of the people were willing to make reasonable sacrifice for maintaining the state's credit. The Legislature at no time gave official sanction to any other view. The gravest error of all was that the taxes as first levied were too small. Even if collected in full, the total proceeds would have been insufficient to meet the demands upon the treasury. Confidence could not be restored until the addition of new taxes rendered it at least possible for the budget to balance.

Not until the spring of 1844 did the Legislature assume an aggressive policy. Then, a law[50] was passed providing, first, that in case the authorities of any county or of Baltimore City should neglect to levy the state tax within the specified time, the Governor should appoint a tax board of three members to perform this duty; second, that where a levy had been made but no collectors had been appointed, the Governor should appoint collectors from the residents of the county or city in question; and, finally, that if collectors were not appointed either by the local authorities or by the Governor, the treasurer should appoint special agents with authority to receive money due on taxes. Payment to the agents was voluntary, but persons so doing would escape the interest charged upon those in arrears. The authority given the Governor to appoint collectors in delinquent counties was without effect, as he was unable to find persons willing to bear the odium.[51] This was remedied at the next session by providing that such collectors could be chosen from persons resident outside the counties in which they were to serve;[52] but this provision,

[48] Niles' Register, March 16, 1844.
[49] Idem, August 26, 1843.
[50] Md. Laws, 1843, ch. 208.
[51] Governor's Message, 1844.
[52] Md. Laws, 1844, ch. 236; 1845, ch. 203.

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also, was rendered ineffectual by the failure to give the Governor authority to compensate such collectors.[53] Thereupon, the treasurer appointed agents; and these met with considerable success.[54]

Minor laws of the next session were more successful. Swifter punishment was provided for those who should offer violence to a collector; any person having a claim against the state was to have the amount of his taxes deducted from such claim;[55] property subject to the tax was made more immediately distrainable, and the attorney-general was authorized to buy in such property, when this should be necessary to protect the state's interests.[56] The actual content of these coercive measures, however, was of less importance than the resolute disposition shown in their passage.[57] This, together with Governor Pratt's election in the fall of 1844, was decisive. Opposition died down, and by 1846 the collection of the property tax was in effective operation.

The difficulty of collection was not confined to the property tax; it extended to all those taxes whose collection depended upon the activity of county officials. The specific tax on watches and silver plate produced almost nothing. The income tax, except in those cases where the tax could be collected at the source, was similarly unproductive,[58] and, in 1848, was entirely repealed.[59] It had been estimated that the new taxes imposed between 1841 and 1844, in supplement to the property tax, would produce $600,000 during those three years. Instead of this the actual product was barely $15,000.[60]

[53] Governor's Message, 1845.
[54] Niles' Register, 1845, February 8.
[55] Md. Laws, 1845, ch. 145.
[56] Idem, 1845, ch. 196.
[57] Niles' Register, 1845, June 14.
[58] Treasurer's Report, 1846.
[59] Md. Laws, 1847, ch. 252.
[60] Governor's Message, 1844.

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The Struggle for Resumption. (1841–1848).

In reviving the property tax, in 1841, the natural but serious mistake was made of overestimating the amount of assessable property within the state. No general assessment had been made for a half-century; and the various local assessments were notoriously untrustworty. Thus, an estimate of the product of a new assessment was little more than guesswork. The Legislature "guessed" $300,000,000—$100,000,000 each for real estate, improvements thereon, and personal property; and upon this basis the rate was fixed at one fifth of one per cent. The product of this rate, $600,000, would, if fully collected, just about meet the annual deficit due to the interest on the public debt. The actual returns of the assessors, however, listed the taxable property at only $196,751,149;[61] and, from this amount, considerable abatements were made by the levy courts, the commissioners of the counties, and the appeal tax court of Baltimore City, under the authority given them to revise the assessors' returns. The assessment of Baltimore City, as first made, was so unsatisfactory that a new assessment was ordered for that city. This added $23,000,000 to the taxable basis; but, notwithstanding this, no attempt was made to reassess property in the counties. The taxing of private debts was generally evaded by liquidation,[62] sufficiently long at least to have the debts stricken from the assessment books. The banks whose charters had been extended by the acts of 1821 and 1835 claimed to be exempt from the new law, under the plea that the payment of the tax upon capital stock and the further payment of the "bonuses" were understood to have absolved them from other taxation. The court of appeals decided that such was the case with the banks rechartered by the act of 1821, that the wording of that act gave them complete exemption from further taxation during the continuance of

[61] Governor's Message, 1843. By December, 1843, the total assessment had been reduced to less than $180,000,000.
[62] Treasurer's Report, 1843.

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their charters, which would expire in 1846. But the court held that the language of the act of 1835 did not extend this privilege to the banks rechartered under its provisions.[63]

The rate of the property tax was increased in 1842 from one fifth to one fourth of one per cent.; but, because of the difficulty of collecting even such a moderate rate as this, no further increase was attempted. The easier course was followed of imposing other kinds of taxes—the income tax, the stamp tax, etc., as already described. Collection of the taxes was somewhat accelerated after 1843 by the system of allowing the coupons upon the state bonds and certificates of interest to be received in payment of the property and income taxes.[64] At first, this privilege was restricted to the use of such coupons and certificates only as were payable in the year in which they were offered; but, later, the privilege was made general. As these coupons and certificates were selling at a discount in the market, the permission to use them in payment of taxes was accepted quite generally. Out of the $523,000 received in 1846 from the property and income taxes, all but $50,000 was in the form of coupons. The coupons of interest upon the state bonds, held by the treasurer to the credit of the sinking fund, were treated in the same manner.[65] They were sold by the treasurer for what they would bring in the open market, and the proceeds invested for the benefit of that fund.

Numerous plans were devised for the relief of the state's financial embarrassment. It was urged by one party that the National Government should assume the debts of the individual states.[66] A joint resolution of the houses demanded that the United States should fulfill the promise of the Surplus Revenue Distribution Act of 1837, which had been repealed before the fourth instalment had been deposited with the states. The diversion of the school fund

[63] Governor's Message, 1848.
[64] Md. Laws, 1842, ch. 189.
[65] Idem, 1843, Resolution 20.
[66] Idem, 1844, Resolution 17. Public Document K, 1843. Governor's Messages, 1840, 1842 and 1843.

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and of the sinking fund to the purpose of interest payment was urged, but was never acted upon. More successful were the efforts made to reduce the ordinary expenses of the state. The separate staff of officials previously allowed the Eastern Shore was almost entirely abolished—including the treasurer of the Eastern Shore—and the performance of their duties transferred to the corresponding Western Shore officials. Other minor offices were abolished, and the salaries of some important ones reduced, the Governor's to $2000, the secretary of state's to $1000[67] and the chancellor's to $3000.[68] Most important of all the retrenchment measures was the substitution of biennial for annual sessions of the Legislature.[69]

In 1843 an act was passed authorizing the sale of the more important of the state's investments in internal improvement companies, and directing the treasurer to advertise in foreign and domestic papers for proposals.[70] The minimum terms which he was authorized to accept for the several investments were as follows:

The Chesapeake and Ohio Canal	$5,000,000
The Baltimore and Ohio Railroad	4,200,000
The Susquehanna and Tidewater Canal	1,000,000
The Baltimore and Susquehanna Railroad	1,500,000

Payment was to be made in state stock bearing not less than 5 per cent. interest. Advertisement was duly made but without result. The only offer received was for the state's interest in the Tidewater Canal Company; and even this was not satisfactory.[71]

Although it was no longer possible for the state to assist the several railroads and canals in which it was interested, their success was still regarded as the ultimate means of saving the state's credit. For a time, however, all of those undertakings languished. The Baltimore and Ohio Rail-

[67] Md. Laws, 1845, ch. 232.
[68] Idem, 1846, Resolution 19.
[69] Idem, 1845, ch. 269; confirmed 1846, ch. 306.
[70] Idem, 1842, ch. 301.
[71] Treasurer's Report, 1843.

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road was of least burden to the state. The $3,000,000 worth of state bonds loaned that road under the acts of 1836 and 1839 were still in the hands of the company, and were not disposed of until 1850–51. In the mean time the interest thereon did not have to be met; and the occasional dividends declared by the company, together with the tax on the Washington Branch, compensated the treasury for the interest on the stock issued by the state for the benefit of the Baltimore and Ohio Railroad. In 1842 the road reached Cumberland; but it was not until six years later that active work upon the western extension was begun.

The Chesapeake and Ohio Canal Company made no progress at all between 1840 and 1844. At the March session, 1841,[72] the Legislature had authorized another loan of $2,000,000 to complete the canal to Cumberland, but upon such conditions that the company was unable to comply.[73] Even if the conditions had been fulfilled, it would have been impossible to have negotiated a sale of state bonds. In 1845 the final step was taken. The Legislature agreed to postpone the state's liens upon the canal in favor of a loan by the company itself;[74] and, by this means, the canal was completed to Cumberland in 1850.

The Baltimore and Susquehanna Railroad and the Tidewater Canal, bidding as they did for the trade of the same region, developed an intense rivalry,[75] much as the Baltimore and Ohio Railroad and the Chesapeake and Ohio Canal had previously done. Largely because of this, neither company earned sufficient profits to enable it to meet with regularity the interest upon the loans from the state. Their interest arrears became formidable; and provision was made by the Legislature for funding these arrears into new bonds.

By the middle of 1846 the receipts from the new taxes had so increased that the revenues of the treasury exceeded all the necessary expenditures for that year, with the excep-

[72] Md. Laws, 1841 (March), ch. 30.
[73] Treasurer's Report, 1841.
[74] Md. Laws, 1844, ch. 281.
[75] Governor's Message, 1846.

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tion of the sum due for interest arrears. The gradual improvement in the financial condition of the state from 1841 to 1848 is shown in the following table:[76]

	Total Receipts.	Receipts from Property Tax.*	Paid on Account of Interest.	Arrears of Interest at Close of Year.
1842	$542,910	$254,353	$49,506	$859,656
1843	680,429	367,233	273,376	1,171,873
1844	743,480	376,333	395,060	1,450,962
1845	966,589	507,781	710,785	1,376,891
1846	917,888	523,049	732,290	1,300,023
1847	1,374,904	769,821	926,667	969,000
1848	1,000,572	548,019	751,166	854,003

*The receipts from the income tax and from the tax on officers' fees are here included under the receipts from the property tax, as the treasurer's reports do not separate the three items. The former two items, however, were not large, and do not greatly affect the above figures.

Full resumption of interest payment could probably have been effected as early as 1846; but the Legislature waited until the success of resumption was assured beyond all risk of a second suspension before authorizing this step. In the spring of 1847 the necessary act was finally passed.[77] The commissioner of loans was directed to receive all outstanding coupons and certificates of debt and issue therefor an equivalent amount of new state bonds; and the treasurer was ordered to resume the payment of interest upon all state bonds on January 1, 1848. In case of insufficient funds, however, the interest on the original debt was to be first paid; but, in anticipation of current revenue, the treasurer was authorized to borrow upon the security of the state's holdings of bank stock. Coupons and certificates of interest were not to be received in payment of taxes after October 1, 1847.[78] Doubt as to the success of the resumption scheme still kept coupons and certificates of interest at a discount on the market; and taxpayers hastened to avail

[76] Scharf, History of Maryland, Vol. III, pp. 215–216, gives a similar table.
[77] Md. Laws, 1846, ch. 238 (March 8, 1847).
[78] Report of Ways and Means Committee, 1847 (Public Document U).

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themselves of the limited permission to pay their taxes in the depreciated medium. As a consequence, the receipt of coupons and certificates of interest was so large that the arrears of interest were greatly reduced. Conforming to the directions of the act, the outstanding coupons up to January 1, 1848, were duly funded, and, upon that date, the treasurer resumed payment upon the full amount of the state's debt.

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TABLES.

Note.—The compilation of the following tables has been a matter of considerable difficulty. Very few manuscript reports could be located; and the printed records are far from complete. After 1825 the "Public Documents" give material for fairly exhaustive financial statistics; but, for the figures prior to that year, it has been necessary to depend upon such abbreviated reports as appear in the Journals of the House and Senate, supplemented by occasional items in contemporary periodicals and chance references here and there. Moreover, the system of bookkeeping was complicated and not always evident. As a result, it has been found impossible to employ a scientific classification of receipts and expenditures, and the columns headed "Miscellaneous" are undesirably inclusive. Under this heading had to be put the receipts into the Eastern Shore treasury, these being insufficiently itemized to permit of classification. Fortunately the total amount of such receipts was not important. Furthermore, it has been necessary to exclude entirely the receipts from the bank tax of 1814, the product of this tax having been transferred directly to the "Free School Fund" and not entered in the regular statements of the treasury. To offset this, the expenditures for the "Free School Fund" are omitted from the table.

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TABLE I. RECEIPTS.

Year.	Property Tax.	License Tax.	Corporation Tax.	Other Taxes.	State Lotteries.	Dividends, etc., from Improvement Investments.	Dividends, etc., from Other Investments.	Loans.	Miscellaneous Receipts.	Total Receipts.
1790		£1,743							£28,493	£30,236
1791		1,820					£6,850		35,139	43,809
1792		5,495					12,696		29,748	47,939
1793		2,382					7,490		18,605	28,477
1794		3,469					12,721		21,203	37,393
1795		2,222					12,901		24,395	39,518
1796		9,684					15,191		45,336	70,211
1797		4,365					17,828		16,279	38,472
1798		6,074					18,374		11,332	35,780
1799		5,168					18,231		7,972	31,371
1800		6,224					14,668		11,899	32,791
1801		6,277					17,356		31,255	54,888
1802		5,738					22,423		14,477	43,096
1803		5,987				£458	21,253		31,483	58,723
1804		5,980					22,223		9,087	37,390
1805		8,205					21,610		39,943	69,758
1806		5,914					22,080		27,233	55,227
1807		7,882					24,361		43,602	75,845
1808		7,766					23,050		44,548	75,364
1809		6,045				28	27,715		55,468	89,256
1810		8,870				37	33,906		28,469	71,282
1811		7,027				56	27,461		28,207	62,751
1812		7,743					29,334		27,364	64,441
1813		$21,259					$97,602	$262,000	18,973	399,834
1814		18,290				1,000	89,805	174,000	24,382	307,477
1815		14,371					88,335		28,177	130,883
1816		21,742				2,390	93,893		18,648	136,673
1817		25,083				530	71,692		33,840	131,145
1818		21,326				605	64,252		68,115	154,298
1819		24,766		5,075		$480	46,430		$62,352	$139,103

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TABLE I. RECEIPTS. — *Continued.*

Year.	Property Tax.	License Tax.	Corporation Tax.	Other Taxes.	State Lotteries.	Dividends, etc., from Improvement Investments.	Dividends, etc., from Other Investments.	Loans.	Miscellaneous Receipts.	Total Receipts.
1820		$33,895		$17,550		$480	$42,387		$119,002	$213,314
1821		30,710		2,664		275	44,065		101,913	179,627
1822	$2,544	37,068				640	43,895	$130,000	23,713	237,860
1823	9,138	40,516		691	$7,406	590	43,195	27,947	19,421	148,904
1824	52,827	35,587		3,042	20,717	590	41,870		45,827	200,460
1825	40,787	53,682		2,635	28,253	590	38,049		205,402	369,398
1826	33,358	43,914		7,538	25,582	590	38,941		44,113	194,036
1827	23,129	51,613		735	26,249	515	38,716	68,000	57,461	266,416
1828	4,661	59,714		4,794	3,500	615	40,504	55.000	52,249	221,037
1829	1,523	61,117		32,437	6,483	700	40,841		62,972	206,073
1830	1,279	61,263		27,284	14,739	810	41,336		63,661	210,372
1831	183	61,163		29,960	6,928	2,930	42,231	21,311	73,920	238,626
1832	277	71,487		24,692	14,177	7,475	42,637	147,500	297,833	606,078
1833	109	72,006		36,047	17,292	6,108	34,209	177,111	174,704	517,586
1834	724	69,881	$5,000	28,820	21,987	8,786	31,205	10,050	114,902	291,355
1835		72,726	25,000	45,866	15,120	27,343	30,071	1,099,893	191,528	1,507,547
1836	515	79,215	108,749	43,057	16,715	108,118	36,471	1,685,760	52,840	2,131,440
1837		70,396	129,985	42,487	13,953	182,925	34,211	280,260	1,041,143[79]	1,795,360
1838		75,152	56,409	54,870	18,225	179,641	33,919	342,000	115,733	875,949
1839		83,196	53,216	54,341	18,914	143,460	35,935		259,586	648,648
1840		87,201	47,012	50,833	10,907	48,030	32,290	712,165	565,965	1,554,403
1841		87,303	44,471	43,609	10,367	50,310	30,161	458,930	202,400	927,551
1842	254,353	81,246	20,934	45,838	4,172	38,265	26,516	4,894	66,692	542,910
1843	367,233	95,376	59,261	47,342		35,001	28,840		47,376	680,429
1844	376,333	95,894	43,103	33,305		75,739	29,200	30,000	59,905	743,479
1845	507,781	117,738	40,588	49,420		143,065	32,316		75,681	966,589
1846	523,050	143,900	44,348	89,000		51,353	32,107		34,130	917,888
1847	771,311	149,519	48,371	136,471		139,770	33,871	59,700	35,891	1,374,904
1848	435,647	150,103	56,390	156,980		110,960	37,124	12,306	41,062	1,000,572

[79] This includes $955,838.25 received from the United States Surplus Revenue distribution.

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TABLE II. EXPENDITURES.

Year.	Executive Department.	Legislative Department.	Judicial Department.	Education.	Charities.	Penitentiary.	Negro Colonization.	Internal Improvements.	Interest on Funded Debt.	Sinking Fund.	Miscellaneous.	Total Expenditures.
1790	£7,500	£7,221		£3,000	£3,200						£17,004	£37,925
1800	5,161	8,536	$ 6,938	4,075	1,198						22,990	48,898
1808	4,722	8,565	12,525	1,575	1,291	£9,548					8,328	46,554
1812	5,064	13,104	33,050	1,575	1,376	8,556					18,068	60,793
1819	$14,150	$35,542	35,800	$11,900	$14,630	$21,648					$51,521	$185,191
1824	12,862	43,560	37,256	12,000	18,641	8,480			$2,897		31,824	167,520
1825	12,221	42,618	34,395	10,600	15,583	7,800		$10,000	2,897		198,511	334,625
1826	12,731	42,878	33,647	13,300	14,859	7,696		10,000	2,897	$500	59,498	198,006
1827	12,972	48,754	38,540	12,200	15,726	20,784	$1,000	30,000	3,035	1,605	108,793	293,409
1828	11,728	43,303	35,706	13,000	15,478	12,295	1,000	25,000	7,394	1,215	100,883	267,002
1829	11,496	44,769	37,429	17,950	15,816	6,000	1,000		9,308	500	38,078	182,346
1830	11,066	37,263	38,597	19,100	15,864				11,635	500	76,292	210,317
1831	10,378	33,871	36,785	18,750	16,936			21,311	20,540	500	56,484	215,555
1832	11,477	48,847	39,878	21,700	15,352		5,000	147,500	26,173	500	313,501	631,928
1833	11,361	51,171	38,055	22,000	15,380		12,000	175,000	35,202	13,064	163,850	537,083
1834	13,706	49,586	38,274	23,100	22,563		4,000	12,500	53,825		74,244	291,798
1835	15,266	52,801	39,391	23,600	16,946	15,000	7,276	1,100,000	100,081	66,725	72,770	1,509,856
1836	15,914	80,113	38,647	24,100	16,195	5,000	9,461	1,650,000	194,975	4,066	91,349	2,129,820
1837	14,545	67,833	39,636	19,565	22,363		17,556	250,000	271,536		1,042,660	1,745,694
1838	14,398	73,345	38,156	18,563	21,407		10,808	342,000	297,647		95,284	911,608
1839	13,366	76,541	38,723	21,366	26,232		15,470	95,000	291,888		53,302	631,888
1840	14,682	60,632	40,522	19,100	20,766	25,000	10,644	712,165	585,819		68,123	1,557,453
1841	15,441	67,369	39,102	18,500	19,987	10,000	10,583	57,732	566,322		89,456	894,492
1842	13,242	53,777	38,492	20,100	19,354	10,000	10,929	5,406	29,759	10,196	364,275	575,530
1843	11,795	56,703	39,176	19,600	17,779	15,000	10,743	4,377	273,376		217,421	665,970
1844	11,696	56,343	37,285	18,400	15,654		11,063	3,694	395,060	10,900	75,430	635,525
1845	11,847	51,460	40,768	18,900	15,164		11,370	3,855	710,785		84,300	948,449
1846	11,695	49,591	38,139	21,866	9,251		11,476	8,385	732,290		86,559	969,252
1847	10,893	48,882	38,251	19,532	8,537		10,893	4,824	926,667		133,974	1,194,453
1848	9,647	50,799	37,831	19,299	12,558	11,250	10,727	3,905	742,332		144,778	1,013,126

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TABLE III. FUNDED DEBT AND SINKING FUND.

Year.	Funded Debt.	Sinking Fund.	Year.	Funded Debt.	Sinking Fund.
1822	$30,000.00		1836	$4,747,747.03	$726,451.28
1823	57,947.30		1837	5,011,980.73	810,306.63
1824	57,947.30	$5,953.80	1838	7,995,334.39	963,380.15
1825	57,947.30	7,810.80	1839	14,334,148.90	1,013,372.66
1826	57,947.30	9,731.80	1840	15,109,026.22	1,076,533.88
1827	125,947.30	12,123.93	1841	15,213,184.67	1,159,438.80
1828	180,947.30	17,723.43	1842	15,211,393.94	1,175,625.00
1829	?	21,594.43	1843	15,204,784.98	1,186,818.27
1830	601,447.30	25,839.43	1844	?	1,276,306.79
1831	695,497.08	30,001.43	1845	15,186,784.98	1,411,911.54
1832	884,967.08	34,218.18	1846	15,211,784.98	1,515,227.01
1833	1,109,620.76	51,456.13	1847	15,434,706.98	1,642,934.01
1834	1,839,620.76	55,103.63	1848	16,143,077.43	1,786,512.14
1835	2,984,947.30	452,769.61	1849	15,909,981.18	1,892,537.61

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Editors

APPRENTICESHIP IN AMERICAN TRADE UNIONS

BY

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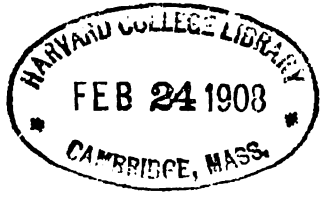

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PREFACE

This monograph is one of a series of investigations into various phases of American trade unionism undertaken by the Economic Seminary of the Johns Hopkins University. In addition to the large collection of trade-union publications now in the Johns Hopkins University, the author had access to materials at the national headquarters of many of the more important American trade unions. The documentary information thus secured has been supplemented and corrected by personal observation and by interviews with labor leaders and employers in the chief centers of industry in the United States.

The author desires to acknowledge the assistance received in every part of the work from Professor Jacob H. Hollander and Associate Professor George E. Barnett.

J. M. M.

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APPRENTICESHIP IN AMERICAN TRADE UNIONS.

INTRODUCTION.

From the beginning of industrial development in the United States to the present time apprenticeship regulations have been successively determined by four different methods:

(*a*) In the colonial and early state period, apprenticeship was regulated by statute law or indenture. Every master, journeyman or other person receiving an apprentice was to conform to the requirements of the law of indenture of the state in which he resided. The apprentice boy was likewise bound under oath to fulfill his part of the contract. This contract was agreed to and signed in the presence of a magistrate. Although effective during certain periods of its existence, the legal indenture became offensive to the apprentice and unsuited to the changed conditions of industrial life, and was finally abandoned.

(*b*) Coexistent with the law of indenture, and doubtless in some of the older industries preceding it, each trade developed certain customary rules governing apprenticeship. These practices were effective in many communities, and in fact were observed throughout entire trades. Still, at a later date, when the means of communication and travel fostered a more severe competition, employers did not hesitate to break any customary or unwritten regulations observed by the journeymen and to substitute their own rules governing apprenticeship.

(*c*) Before the rapid development of the different industries and the growth of trade unionism, while individual bargaining was still the method used by the employees in dealing with their employers, the journeymen realized the weakness of the indenture and of customary rules as ade-

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quate methods for regulating apprenticeship. Moreover, the large number of boys received by some employers tended to reduce the wages of the journeymen. To eliminate this and other evils, the employee undertook, through his trade union, to determine all regulations governing apprenticeship.

During the early stage of unionism, each local union adjusted its apprenticeship rules according to its immediate environment. This practically precluded complete uniformity among the locals throughout each trade. When possible, the union limited the number of apprentices received. Later, the international unions in some well-organized industries assumed control of apprenticeship regulations throughout the entire trade, and made them uniform. The union was impelled to take this step, in the first place, because, as competition developed between employers in different parts of the country, the advantage obtained by an employer who secured extra apprentices at a reduced wage was keenly felt by such of his competitors as were unable to secure this privilege. In the second place, since the market for labor had become national, the journeymen of a trade in all parts of the country were interested in limiting the large number of apprentices received in certain shops.

The employers never conceded the claims of the unions to determine all apprenticeship regulations, especially the right to place a restriction upon the number permitted, and opposed attempts to enforce such limitation. A bitter struggle followed. When the union was strongly organized, its regulations prevailed; when weakly organized, the employers put to work in their non-union shops as many boys as they desired. Moreover, neither party felt especially concerned to demand thorough training for the apprentice.

(*d*) Finally, as the growth of trade unions and the development of employers' associations has continued, in some trades practically all disputed questions, including those relating to apprenticeship, have come to be submitted to a joint board for settlement. With the more general recognition

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and acceptance of the principles of conciliation, apprenticeship regulations are in many cases mutually determined in this manner and heartier coöperation is secured in enforcing them.

In the following study, the four methods of securing apprenticeship regulations, above mentioned, will be considered; the causes leading to the failure of one and the substitution of another and the conditions of the apprentice under each will be pointed out; the extent of apprenticeship rules in trade unions of the present day will be noted; and the purpose and scope of such rules will be discussed. Since this study is primarily concerned with apprenticeship and trade unions, only a brief statement of the law of indenture seems necessary. The previous training of foreign journeymen engaged in this country and the customary rules gradually developed to meet the peculiar native environment influenced materially the apprenticeship regulations of the early trade unions. A brief study of these influences enables us the better to follow and appreciate later union apprenticeship regulations.

It should be noted, however, that, while different methods for determining apprenticeship regulations were used, no precise period other than the general historical sequence following the change of industry can be assigned for each. For example, the old indenture laws have not been entirely removed from the statute books. Again, in many small or unorganized shops, customary apprenticeship rules are observed at the present time; and, even though conciliation has proved to be the most satisfactory method for enacting and enforcing these regulations, as a matter of fact they are determined in many cases exclusively by the local or international union.

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PART I.

HISTORICAL.

CHAPTER I.

Governmental Regulation of Apprenticeship.

The underlying purpose of early apprenticeship laws in the United States was twofold, (*a*) industrial and (*b*) philanthropic.

(*a*) The general custom prevailed—inherited from European industrial conditions—for every boy of the artisan class to learn a trade. The ordinary mechanic desired to have his own son thus equipped. For, without such training, he was handicapped in carrying on his life work. Under the law, it was possible for any master to receive an apprentice with the assurance that the boy would remain in his charge until he became of age, and the boy was likewise certain that he would be taught a useful trade.

(*b*) Secondly, the law guaranteed to poor, unfortunate or neglected children the opportunity to learn a trade, so that they might, in time, become useful citizens and not public charges. This intention is clearly set forth in the preamble to "An Act for the Better Regulations of Apprentices," passed by the State of Maryland in 1793. "Whereas it has been found by experience that poor children, orphans and illegitimate children for want of sufficient system have been left destitute of support, and have become useless or depraved members of society; and whereas it would greatly conduce to the good of the public in general and of such children in particular, that necessary instruction in trades and useful arts should be afforded them; therefore be it enacted,"[1] etc.

[1] Laws of Maryland, 1793, Chapter 14.

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The apprenticeship laws varied from state to state, but the main features were essentially the same:

Those permitted to bind out children were parents, who might indenture their own children; justices of the peace, who were empowered to bind out orphans, children suffering through negligence or poverty of parents, children of beggars, illegitimate or destitute children; trustees or guardians, to whose care orphans or other poor children had been intrusted; institutions or benevolent societies, under whose jurisdiction dependents had been placed.

Any manufacturer, mechanic, mariner, handicraftsman or any other person acceptable to the one having the child in charge and to the court officials was permitted to receive an apprentice provided satisfactory terms could be arranged. The mode of procedure or ceremony followed when indenturing an apprentice was simple. The father, trustees, or other person having control of the boy, together with the one receiving the apprentice, appeared in court with the written indenture, wherein were embodied the terms previously agreed upon. Each party took an oath to abide by the conditions of the indenture, and a copy of the instrument was placed on file in the records of the magistrate, for which service the latter received a small fee paid by the master. In case the child of a beggar or other non-supporting parent was about to be bound out, the latter was consulted in a general way as to the person to whom the child should be bound. Moreover, if any relative or other person desired to provide for the child and furnished an acceptable bond for faithful performance of such duty until the apprentice became of age, the child could not be bound out.

The conditions under which the apprentice served were in the main uniform. As a rule, no definite period of apprenticeship was stated in the contract other than that the apprentice was required to serve until of age—twenty-one years in case of males and sixteen in case of females, thus making the term of service entirely dependent upon the age at the time of indenture. No apprentice could be bound for

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a period extending beyond this limit. When a father bound out his own son, he was free to make any reasonable terms with the master mechanic; but justices of the peace, binding out upon their own authority orphans or other children committed to their charge, were directed by the law to insert in the contract the provision that when possible the master of an apprentice should, in addition to the instruction given in some useful art or trade, provide opportunities whereby the apprentice could obtain a reasonable education in the primary branches—reading, writing and arithmetic. Except in rare or special cases, no attempt was made to specify the particular kind of work in which the apprentice should engage during each year of his term, this being left to the discretion of the employer.

Both the apprentice and the employer were bound by law to observe certain stipulated conditions; and, in case the contract was broken, the guilty party might be summoned before the court and punished. For offences committed during the term of service the apprentice was subject to the same penalty imposed upon any other citizen for a similar offense, and, in case the master paid the fine and costs of the trial, the court, to compensate his employer, could adjudge the extra time the boy should serve after the completion of his regular term. In some states the master was prohibited, under penalty of discharging his apprentices, from taking them into another state or beyond the boundary of his own state.

In case the master died during the term of apprenticeship, the widow was given power to transfer all rights and interests in the apprentice to another master of the same trade, for a sum agreed upon by them. This amount was considered as belonging directly to the widow and not as a part of the estate of her deceased husband. Moreover, after the death of the master, until some disposition was made of the apprentice, he was to remain at home and continue his usual work under direction of the widow.

As a rule, the employer was not forced to take an appren-

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tice, and, on the other hand, if he did desire to use apprentices, was not limited as to the number he might put to work. In some states, however, every master pilot was compelled to take at least one apprentice and to give him the necessary instruction. The complete control given to the employer over apprentices caused the latter in some cases to be grouped with servants and slaves, and the same laws were sometimes made applicable to both.

The contents of the indenture were largely matters of contract between the master mechanic and the apprentice or parent, and the terms thereof varied according to the conditions and desires of the parties concerned. Some employers were exacting and demanded pledges of the boy. The state, also having in mind the general welfare of the apprentices—for one object of the law was to provide poor, neglected and orphan children with homes and opportunities to learn trades—not only protected him by restrictions placed on the employer, but also exacted promises of good behavior from the boy himself. Thus, an indenture entered into by a master boot and shoe maker and a boy who engaged himself to learn that trade, provided that "During all which term, the said Apprentice, his said Master well and faithfully shall serve, his secrets keep, and his lawful commands everywhere at all times readily obey. He shall do no damage to his said Master nor wilfully suffer any to be done by others, and if any to his knowledge be intended, he shall give his Master seasonable notice thereof. He shall not waste the goods of his said Master nor lend them unlawfully to any. At card, dice, or any other unlawful game, he shall not play. Fornication he shall not commit, nor matrimony contract, during the said term. Taverns, alehouses or places of gaming he shall not haunt or frequent. From the service of his said Master he shall not absent himself, but in all things and at all times, he shall carry and behave himself as a good and faithful Apprentice ought, during the whole term aforesaid. And the said Master on his part doth hereby promise, covenant and

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agree to teach and instruct the said Apprentice, or cause him to be taught and instructed in the art, trade or calling of a Boot and Shoe Maker by the best way or means he can, and the said Master agrees to give the said Apprentice three months schooling to wit, Reading, Writing and Cyphering as far as the Rule of Three Inclusive and shall well and faithfully find and provide for the said Apprentice, good and sufficient meat, drink, clothing, lodging, and other necessities fit and convenient for such an Apprentice, during the term aforesaid and at the expiration of the said term to have the Customary freedom due."

Under such conditions, the early manufacturer, often a hard worker, having in view the future welfare of his business, and in many cases, desiring to equip his own son, or a boy in whom he was interested, for his life work, gathered one or more lads about him and gave them, often in person, the instruction needed to make of them competent workmen. Except in so far as the indenture prescribed the manner in which apprentices were to be received and compelled each party to abide by the terms of the contract, the employer and the parent or guardian of the apprentice were practically free to arrange all details of the agreement.

The failure and final abandonment of the indenture system is to be attributed to several causes. It was peculiarly suited to domestic or small-scale manufacture in which personal contact between the master and apprentice was emphasized, and it became correspondingly an ineffective system, with the emergence and final establishment of the modern factory or large-scale production. In fact, apprenticeship regulations, like other trade rules, depend largely upon the methods under which the industry is operated, and must be adjusted from time to time according to the new conditions arising.

Again, the artisan class insisted that their children be taught a trade, and the master was likewise anxious for a legal contract in order that he might be assured of con-

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stant service until the end of the stated term. The indenture afforded the beginner such an opportunity to learn the trade, but at a distinct sacrifice of personal liberty. This was specially true in the case of poor, neglected and orphan children, who were often bound to masters whom they did not select and upon terms not of their own choosing. Theoretically, the master and the boy assumed equal positions before the law—each being bound to perform certain clearly defined duties—and the relations between them were often mutually pleasant and profitable. Nevertheless, the master naturally exercised the larger influence, and the apprentice was at a corresponding disadvantage. In practically every industry, the boy was compelled to perform odd jobs entirely distinct from trade activities. Accordingly, his term of apprenticeship was unduly extended. Thus, entirely apart from the industrial changes in the methods of production which rendered the indenture system less desirable, it tended of itself to become more and more objectionable to the apprentice boys. They became restless under the heavy restraint imposed upon them, often ran away from their masters, and sought employment elsewhere as journeymen. They refused to be grouped before the law with servants and slaves; and their continued opposition to the system contributed in no small degree to its final abandonment.

Finally, it is perhaps not entirely fanciful to suggest that the gradual growth of feeling against the law by which the slave was bound to his master operated to bring into disfavor the statute under which the apprentice was held by his employer. Journeymen who have been long at their trade, especially those whose term antedates the Civil War, assert that such was undoubtedly the case, even though the influence was not always visible nor tangible.

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CHAPTER II.

Customary Apprenticeship Rules.

Indenture laws gradually became ineffective in the various trades. Yet, even after employers and journeymen experienced difficulty in enforcing them, in the absence of more efficient methods such laws were retained on the statute books.

Even, however, during the existence of the indenture itself, and previous to the organization of trade unions, artisans engaged at the various trades developed certain customs in connection with apprenticeship which, while not rigidly observed at all times, nevertheless were more or less binding, and were the rules most generally practiced. These early customs adopted by the journeymen themselves in dealing with the apprentice were in a great measure influenced (*a*) by foreign trade customs introduced by artisans coming from other countries and (*b*) by the conditions existing in the new country.

(*a*) The words "berkshire" and "two-thirder," designating beginners in the iron molding and printing industries respectively, were brought from England, where the same terms were widely used, and suggest the direct influence of English customs upon apprenticeship regulations in this country. This is readily understood when the large number of foreigners engaged in American industry is considered. It frequently happened that employers, even though permitted to receive a large number of apprentices, found the supply of artisans inadequate to meet the legitimate demands of the trade, and sent representatives abroad to urge skilled workmen to take up residence in this country. In some instances, state legislatures, acting upon the urgent appeal of prominent employers, who claimed that more trained mechanics were needed, sent agents abroad to urge

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immigration to that state. In 1863 the Legislature of Missouri, urged by prominent employers of the commonwealth, sent an agent to Europe for the express purpose of inducing skilled mechanics to seek employment in that state. Mr. Giles Filley, a prominent stove manufacturer of St. Louis, claimed that the supply of well-trained iron molders was entirely inadequate to meet his legitimate business demands, and urged the agent to send him a large number of Prussian iron molders. This request was speedily complied with, and twenty-five molders, having accepted the offer of the American agent by contract, dated Berlin, March 8, 1864, started for St. Louis. Upon their arrival, they were approached by members of the local union of iron molders, who explained that the supposed deficiency in the supply of workmen was not caused by any unfair and rigid apprenticeship rules of the union nor by any unwillingness upon the part of the journeymen to work, but, as they stated, by the very low wages offered. Upon this information, the Prussian molders disregarded their contract signed in Berlin, became members of the union, and through the influence of that body succeeded in obtaining employment in other cities.

The methods used by employers in the printing industry to secure foreign workmen are made clear in a statement prefacing the printed constitution of the New York Typographical Association, issued in 1833. After reciting the depressed condition of the trade, it adds that "among the means made use of to depress the business by those who withhold from the workmen their just demands, has been advertising in several of the newspapers in Scotland, and elsewhere in Great Britain, that a great opening for printers existed in New York, thereby inducing many to leave the comforts of home in the old country for a precarious subsistence on this side of the Atlantic. Many to their regret can testify to the truth of this assertion; and the feelings of the man, by whose unprincipled conduct this breaking up of kindred and subsequent disappointment in obtaining

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the means of support have happened, are not to be envied. Perhaps the day may come, when remorse, like a subtle poison, may lurk about his heart, and cause him to do an act of justice to those who have been swindled by his deception. When the Association was informed of the means taken by unprincipled men to injure the business, a circular was immediately addressed to the Printers of the United Kingdom of Great Britain and Ireland, and dispatched by one of its members. The Association has since learned, by letters from Europe, that the appeal has had an extensive circulation, and has tended in a great measure to counteract the evil contemplated by the original advertisements."

In response to these and other inducements, foreign mechanics came in large numbers to the United States. They prided themselves upon their skill, which, as a rule, was superior to that of native Americans who had received little training, and that of inferior quality. In order to make competent workmen of his own sons or of the apprentice boys placed under his charge, it was natural for the newly arrived journeyman to adopt the same methods under which he had learned his trade at home. European example thus influenced, if it did not entirely determine, American apprenticeship customs.

(*b*) The dominance of simple rather than complex industry during the early period of our national history, and even after the formation of the first labor unions, directly influenced trade conditions generally, including rules governing apprenticeship. The industrial unit was comparatively small, ordinarily the small shop, sometimes even the family group.

The period was also marked by the absence of a widely extended market, rapid communication and easy means of transportation. These conditions made it necessary for each household or community to produce for itself, without any special knowledge of the means and resources of other districts, and without even the stimulus of competition.

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The cigar making industry, for example, was largely carried on in small local establishments. The following passage from the first annual report of the Ohio Bureau of Labor Statistics summarizes the early condition of the cigar industry. "Previous to 1861, no class of employes was more independent of employers than cigar makers. Few large manufacturing establishments existed, and as a rule, the manufacturer was the retailer. Whenever the journeyman became dissatisfied with his condition, he withdrew from the employer and set up a shop of his own."[2] Every large city was well supplied with many such shops, where the journeyman, aided by members of his family or by apprentice boys, made all his goods by hand. Even the small cities had their own cigar manufacturers, who made and retailed to the general public the larger portion of the local supply.

Similar early conditions affecting the machinists' and blacksmiths' trade are clearly set forth by one long identified with the trade in organizing unions and in managing their affairs. "Young men whose majority dates since 1861 can form a very imperfect idea of what the craft was twenty or twenty-five years ago. It is still within the recollection of gray-headed machinists and blacksmiths, the days when a machinist was a compound of handiwork, a kind of cross between a millwright and whitesmith, a fitter, furnisher, locksmith, etc. . . . In the early days of mechanism in the country but few shops employed many men. Generally the employer was head man, he knew his men personally, he instructed his apprentices and kept a general supervision of his business. By that means every workman knew his employer, and if aught went astray there was no circumlocution office to go through to have an understanding about it. But as the business came to be more fully developed, it was found that more capital must be employed and the authority and supervision of the owner or owners must be delegated to superintendent or foreman."[3]

Moreover, the precise relations existing between the ap-

[2] Cigar Makers' Journal, May, 1878, p. 12.
[3] Machinists and Blacksmiths' Journal, February, 1872, p. 521.

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prentice and his master were affected by the nature of the trade itself and the manner in which it was conducted. The building trades, for example, were easily "picked up;" or at least the opportunities for acquiring them were abundant. In these trades the beginner was apprenticed to his employer.

On the other hand, the conditions existing in such an industry as stove molding were quite different.[4] Considerable capital was required to establish the industry, which was conducted in fewer localities and afforded opportunities for a much smaller number of apprentices. The boy was often apprenticed to neither the proprietor of the furnace nor the real stove manufacturers, that is, the employer who furnished the patterns and had his stove molded, but to the journeyman, who paid him by the piece for what he made. Every journeyman engaged at least one "berkshire," as the apprentice boy was called, and oftentimes four or five. "These berkshires were a peculiar institution. They were boys employed by molders to assist them at their work, nominally as helpers, but in reality they were apprentices, and every molder had to use at least one of them."[5] Finally, when the casting of the stove plate came under the control of the employer who furnished the designs and molded the stoves, boys were generally apprenticed to the employer, though the journeymen continued the practice of taking apprentices until the custom was forbidden by the union.

Many trades early became overcrowded because of the large number of apprentices who were allowed to learn the trade. The right of the employer to engage as many apprentices as he desired was a custom of long standing, and was regarded as an undoubted right, not to be surrendered without a struggle. Indeed, trouble began with the first attempt of the locals to restrict the number going to the trade, so that the unions found it necessary to act slowly and to make the change gradually.

[4] The first foundry designed exclusively for the manufacture of stoves and hollow ware in this country was erected in 1829. Previous to this date all stoves were cast at block furnaces. See Iron Molders' Journal, January, 1904, p. 7.

[5] Iron Molders' Journal, August, 1896, p. 1.

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In an industry such as that of cigar making, where the producers were small, each manufacturer engaged apprentices according to the needs of his own individual shop, regardless of the general welfare of the trade. In consequence, the trade was always becoming overcrowded, and, after the formation of unions,[6] one of the most difficult problems was how to control the supply of apprentices. After the movement towards concentration of the industry had begun,[7] the larger factories were fairly well organized by the union, and a regular course of training could be required of all beginners.

In certain cities, however, the trade came to be carried on in a large measure by tenement-house workers, with the familiar attendant evils. This system of production has continued even to the present time, though state laws have been enacted against sweat-shop work, and, in many instances, the evil has been eradicated. But in the tenement houses, which were generally owned by the manufacturer and filled entirely with tenants who promised to engage in cigar making, no accurate estimate of the number learning the trade could be secured, for the material was taken to and from the house by the employer, and the women and children aided in the making. It was from this source that the trade was recruited, and it was estimated that, at one time, about four fifths of the cigars manufactured in New York City were made in these tenement houses by workers who were almost entirely non-union.

Those trades were especially overcrowded in which it was

[6] The first Cigar Makers' Union was organized at Baltimore, May 5, 1851. On May 10–14 of the same year a meeting of representatives from cities in the State of New York met at Syracuse for the purpose of establishing a uniform bill of prices throughout the state and regulating the apprenticeship system; see Journal and Program of Cigar Makers' International Union, twentieth session, held at Milwaukee, 1893.

[7] In 1861 the United States Government placed a heavy tax on cigars, thus to a certain extent driving the business into the hands of large manufacturers and compelling the cigar maker to become an employee working for wages. First Annual Report of the Ohio Bureau of Labor Statistics, Columbus, 1878; see Cigar Makers' Journal, May, 1878, p. 12.

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possible to do piecework, and hence in which both employers and employing journeymen found it profitable to engage the services of many apprentices. In the iron molding industry "the 'Berkshire' system, as it was called, was a standing grievance, as it operated to create an overcrowded market of stove molders with its logical and pernicious results."[8] Whether the journeyman was paid by the piece or so much for each completed stove, for both methods were practiced at different times and at different places, the greater the number of apprentices directed by him, the greater the output, and consequently the larger his wage. Later on, when the number of "berkshires" allowed each journeyman was limited by union regulation because of the rapidity with which the trade was being recruited, many of the older members complained bitterly, and evaded the intent of the regulation by adopting a boy, for the union recognized the right of the journeyman to teach the trade to his own or adopted son.

Somewhat similar economic conditions brought about an oversupply of apprentices in the printing trade. During the early years of the printing industry the editor or proprietor of a newspaper or job printing office was also a practical printer. It was the cherished ambition of the journeyman printer to master the trade as soon as possible, that he might become the proprietor of his own establishment, from which he could edit and issue his own paper. This important position enabled the occupant to wield considerable influence and power in the community, but required a long period of training upon the part of the one filling it. It also gave the journeyman master or proprietor an excellent opportunity to use with profit a number of apprentices. The number of apprentices employed in certain shops often exceeded the total number of journeymen engaged therein. In fact, instances are recorded where the proprietor was compelled to close his shop during a strike of apprentices because the number of journeymen remaining was insufficient to continue the business.

[8] Iron Molders' Journal, August, 1896, p. 1.

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At no time during the early period was the trade free from "two-thirders," that is, those who had not served a full apprentice term, or runaway apprentices. Moreover, the typographical unions in combating the "two-thirder" system were, like the iron molders' unions in opposing the "berkshire" system, compelled to oppose not only the employers, but also many of their own members.

The evils arising from the employment of "two-thirders" or "half-way journeymen" are suggested by a circular letter sent to the trade in 1809 by the New York Typographical Society. Among other grievances cited, the letter sets forth that "the practice of employing what are termed 'half-way journeymen' in preference to those who have served their time, while it holds out encouragement to boys to elope from their masters, as soon as they acquire a sufficient knowledge of the art to be enabled to earn their bread, is a great grievance to journeymen, and almost certain ruin to the boys themselves. Becoming masters of their own conduct at a period of life when they are incapable of governing their passions and propensities, they plunge headlong into every species of dissipation, and are often debilitated by debauchery and disease before they arrive at the state of manhood. And it also tends to an unnecessary multiplication of apprentices, inasmuch as the place of every boy who elopes from his master is usually supplied by another; while at the same time the runaway supplies, after a manner, the place of a regular journeyman, and one who probably has a family dependent upon his labor for support. We would also beg leave to call your attention to a practice as illiberal and unjust as the former and attended, perhaps, with evils of a more aggravating motive; we mean that of taking grown men (foreigners) as apprentices to some twelve or fifteen months, when they are to be turned into the situations of men who are masters of their business, which men are to be turned out of their places by miserable botches because they will work for what they can get. By these means numbers of excellent workmen, who ought to be ornaments to the

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profession, are driven by necessity to some other means of support."[9]

Similarly, among the machinists and blacksmiths, the idea of limiting the number of apprentices entering the trade did not appear until late. The early employers of journeymen were at liberty to engage as many boys as the demands of the business would warrant, or, in case of the journeyman, as many as he was personally able to direct. "The taking on of as many apprentices as could be worked was considered the indubitable right of every employer, the peremptory dismissal of workmen was another; hence, in dull times, men with families to support would find themselves out of work, while the shops, whose doors were closed on them, were filled with apprentice boys. This inordinate rush of apprentices was remonstrated against in vain. The writer of this was one of some twenty young men kept at work after the great financial crisis of 1857, while there were sixty apprentices employed."[10]

The wages of the apprentice, especially at the beginning of his term, consisted in many cases of mere board and lodging, ordinarily obtained at the home of the employer. However, when the boy was bound out to the journeyman, who had no desire to increase the number of workmen in his trade, but received apprentices mainly in order to increase his own wages, especially when engaged at piecework, the boy frequently paid a stated amount to the journeyman, who taught him the "art and mysteries" of the craft. Various attempts were made by different unions to demand extra pay for journeymen who spent a portion of their time in teaching an apprentice. Thus, in the scale of prices drawn up by the New York Typographical Society in 1815, an article was inserted which provided that "a pressman shall receive for teaching an apprentice presswork, for the first three months, five cents per token, and for the three months following three cents per token."

[9] Early Organizations of Printers, by Ethelbert Stewart, in Bulletin of the Bureau of Labor, No. 61, November, 1905.

[10] See "Early History of Our Organization," in Machinists and Blacksmiths' Journal, February, 1872, p. 520.

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In common with the journeyman, the apprentice worked long hours each day. "The hours of labor were long, it being not uncommon for molders to start to work at four o'clock in the morning, and the spectacle of a molder trudging through the streets at that hour on his way to work, with his 'berkshire' at his side bearing a lantern, was not an unusual one to the night watch of those days."[11]

The feeling between the apprentice and his master was, in some cases, more like that existing between father and son than between employer and employee. If the apprentice was not really adopted by the master, he often enjoyed the pleasure and advantage of the latter's home, to which he generally had free access, and in which he did many things entirely separate and distinct from the duties connected with learning the trade. Likewise, at the shop, he ran errands, cleaned the premises, arranged the tools, and, in fact, became a general factotum about the place. While it was conceded that the boy was indispensable to the employer, still the idea prevailed that, when the master agreed to teach his trade to the beginner, he did so at a personal sacrifice, at least during the first few years of the term, and, to compensate in a manner for this loss, the apprentice agreed to perform these various services apart from his regular trade. Doubtless many employers did their utmost to make the boy a paying investment from the very beginning, and, if we may judge from the numerous runaways recorded, especially from the emphasis given to this portion of the apprentice question in the early laws on the subject, employers were sometimes hard taskmasters.

The close personal relation, which often existed between the old master and his apprentice during the early times, was clearly described to the present writer by an old printer, who spoke freely of the conditions under which he served his apprenticeship term, more than forty years ago, as well as of the interest taken in him and the opportunities afforded him to obtain a thorough knowledge of the trade. He and his employer labored together in a small printing office from

[11] Iron Molders' Journal, August, 1896, p. 1.

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which the weekly newspaper was issued to the people in the immediate community. During press days he was employed from early morning to late at night. But then an interval of several days followed, during which time work was practically suspended, and the apprentice enjoyed leisure. The house of the employer was the home of the apprentice, though the latter frequently visited his own parents on Saturday night, returning on the following Monday morning. At the beginning of each day he performed his regular assigned tasks about the house, after which he set off with his master, ready for the day's work at the office. The conditions under which he labored as an apprentice were far more pleasant than those enjoyed in after years, when he had completed his term and went out as a journeyman upon his own responsibility.

The length of the apprentice term, while to some extent fixed for each trade by general custom, really depended upon the will of the employer and the ability of the beginner. A competent journeyman was an all-round workman, and, when possible, the apprentice was retained at the trade until he had mastered all parts of it and was able to turn out a complete, finished product. However, no evidence is found that he was compelled to make and exhibit a masterpiece before he was admitted into the ranks of the journeymen, nor did he wander about during the last year of his apprenticeship or the one immediately following it. He was in all cases, except during emergencies, required to serve what was known to be the customary term, sometimes longer.

As the boy rendered the most profitable service during the latter years of his apprenticeship, the master was anxious to retain him as long as possible. It seems clear that the term of apprenticeship, determined under such conditions, was generally a long one, and, being fixed by custom for each trade, was at a later date accepted by many unions and embodied in their written constitutions.

The hatting industry, a trade requiring skilled workmen

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and one in which the apprentice question has always been of much importance, both before and since the formation of unions, may serve as an illustration of the slow change in the length of the term service. During the early years of the industry in this country the work was performed entirely by hand and each journeyman was required to perfect his skill in all branches of the trade; that is, at making, blocking and finishing. The well-trained apprentice was able at the end of his term to take the raw material and work it up into a finished product. The usual term of service for the apprentice was four years. About 1840 machinery began to be perfected whereby hats could be manufactured far more rapidly. The hand-maker could make from two to three dozen hats per day, but the same number of workmen, with the aid of the machine, could turn out many times that number.

Notwithstanding the extensive introduction of machinery in this trade, subdivision of the work has not followed accordingly, so that at the present time the same parts of the work as blocking, sizing and finishing are accomplished by machinery, but the trade still requires highly skilled labor. It maintains rigid but well-enforced apprenticeship rules, though the term of service has been reduced from four to three years.

Whatever uniformity existed in connection with apprenticeship among the various shops in the same trade was largely that secured through force of custom. Moreover, the lack of ready communication between different parts of the country made it practically impossible for masters or journeymen to secure anything like concerted action in regulating apprenticeship or other trade rules, so that those carrying on these industries gradually developed certain customs and practices, which, of course, were local in application and extent.

Finally, the growth of the industrial unit, in which the large factory was substituted for the small manufacturing plant or family; the improvement in means of communication

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and transportation, which permitted a keener competition among manufacturers; the control of large amounts of capital by the employers and the acceptance of the principle of individual bargaining, all tended to render less efficient the former trade customs and to increase the power and influence of the employer to the disadvantage of the journeymen. Accordingly the indenture fell into disfavor, and, whenever possible, the employer brushed aside all trade customs, including apprenticeship regulations.

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CHAPTER III.

Trade-Union Regulation of Apprenticeship.

The trade union was cautious, oftentimes secret in its early efforts to regulate apprenticeship. The requirements which it attempted to secure were largely a continuation of established usage, and the provision that applicants for membership must have previously served a term as a regular apprentice was the chief method of enforcing them.

The experience of the printing trade in this respect is typical of early trade-union activities. The first printers' unions in this country were formed about 1800. By 1839, they existed in practically all of the eastern cities, and as far south and west as Louisville and St. Louis. Up to that time, however, no attempt had been made by any local to limit the number of apprentices, other than the mere requirement that applicants seeking membership must have completed their term of service.

No regulation of apprenticeship is found in the written constitution adopted by any of the unions previous to the above date. The first constitution of the Philadelphia Typographical Society, adopted in 1802, contains the requirement that "no person shall be eligible to become a member of this society, who shall not have served an apprenticeship satisfactory to the board of directors, to whom he shall make application in person, and they shall thereupon proceed to the election by ballot, and, if the candidate shall obtain a majority of two thirds of the board present, he shall then be declared a member of this society, and receive a certificate thereof."[12] The Columbia Typographical Society of Washington, D. C., had practically the same requirement, while the Baltimore Society, in its constitution adopted in 1832, declared that "the indispensable qualifica-

[12] Constitution of Philadelphia Typographical Society, Philadelphia, 1802, Art. XV. Printed in Stewart, *op. cit.*

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tions of all persons hereafter admitted as members of this society are, a good moral character, industrious habits, and a practical knowledge of the art and mystery of letterpress printing, having acquired the same by an apprenticeship of at least four years' minority."[13] At a meeting of the Columbia Typographical Society held on November 1, 1834, a committee was appointed to consider the apprenticeship question. After seeking information from various employers and journeymen in different sections of the country, the committee reported an elaborate set of laws, with the following comment upon the limitation of apprentices:

"A rule directly limiting the number of apprentices in our printing offices was thought to be, on examination, so liable to injustice and abuse between the larger and smaller offices, so difficult in its maintenance, on account of anticipated objections on the part of the employers, so embarrassing in its adjustment, on account of this constant fluctuation of the business, that the committee unanimously determined to abandon it."[14]

The constitution of the Nashville Typographical Society, adopted as late as 1837, contained only the statement that "the qualifications for membership shall be a good character, industrious habits, and a good practical knowledge of the art of letterpress printing. No person shall be admitted to membership in this society who is known to be a runaway apprentice."

The Typographical Society of New Orleans was the first local printers' union to place a limit upon the number of apprentices. The constitution adopted by that body in 1839 contains the following provision as to apprentices. "No member of this association shall work on any English daily morning paper, on which any apprentice may be employed. (This article is not considered applicable to any apprentice now in such office). No member of this association shall work on any English paper or in any book

[13] Constitution of Baltimore Typographical Society, Baltimore, 1832, Art. VI.

[14] See Minutes of Columbia Typographical Society, February 7, 1835, quoted by Stewart, *op. cit.*

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or job office, where any apprentice is employed, who may not be bound for a term of not less than four years during minority. (This clause is not to apply to existing contracts.)"[15] This practice of limiting apprentices initiated by the New Orleans union was in time imitated by all other local unions, and was finally adopted as a fixed policy by the International Typographical Union.

The experience of the printing trade thus illustrates the general trend of development. At first, the local union accepted the custom prevailing in regard to apprentices. Beginners at the trade were merely required to satisfy the union that they had served the ordinary time. The next step taken, represented by the rules of the Baltimore Society, was an attempt by the union to determine exactly how long this customary term should be. In most cases the four year rule was adopted, though some unions accepted members after they had served three years, provided the individual desired to engage at but one of the two divisions of the trade, namely, composition or press-work. Either because the unions were weak and consequently unable to enforce this qualification in the case of all applicants for membership, or because they found it expedient at times to yield somewhat in the matter of its application, "two-thirders" and runaway apprentices found their way into the unions in such large numbers that the craft as a whole suffered much from poor workmanship, and the wages of the regular journeymen were seriously threatened. To meet this emergency and to avoid the bad effects of such a policy, the third step was taken, that is, the locals, led by the New Orleans union, actually limited the number of apprentices in proportion to the number of journeymen employed.

With the local serving as the unit in forming apprenticeship rules, and with each union acting independently, it followed both from the weakness of the union and from the absence of ready communication between far distant

[15] Constitution of New Orleans Typographical Association, 1839, Art. XII, secs. 1–2.

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places that each local, as affected by its environment, developed its own peculiar apprentice rules. Some unions, gaining control of the trade within the surrounding country, made rigid requirements, and these tended to serve as models for the smaller and weaker unions.[16]

Experience, however, soon made it clear that a uniform and effective set of apprenticeship regulations could not be secured in many trades without the coöperation of all locals, and the regulation and enforcement of apprenticeship regulations became one of the forces leading to the formation of international unions. The principles enunciated by the iron molders when forming the first local bodies, namely, fraternity and protection against reduction of wages and against the evils of the "berkshire" system, were enumerated as the objects in view in forming the larger organization.

At the convention called in 1850 to form a National Typographical Union, "the apprentice question caused a prolonged discussion. It came up in the form of a recommendation that the number be limited, and, after a general concurrence in the idea that 'too many printers had been manufactured of late years,' a recommendation to the societies, it was hoped would be organized, as well as to those already in existence, to limit the number of apprentices was adopted, and the employing printers were urgently requested to have apprentices indentured for a period of not less than five years."[17] The same convention, meeting in New York City, December 2, 1850, issued an address to the journeymen printers of the United States, in which it was urged that the local bodies should secure "the en-

[16] Several years previous to the formation of the Iron Molders' International Union, some locals gained control of almost the entire trade within their respective cities, and for some time were able to enforce their demands against the "berkshire" system. At Albany, New York, the ratio was one apprentice to every ten journeymen, not including the sons of journeymen. This rule was rigidly enforced, but gave constant trouble, and finally the demands of the union in this respect led to the great strike of 1859, in which the local was badly beaten.

[17] McVicar, Origin and Progress of the Typographical Union, 1850–91 (Lansing, Michigan, 1891), pp. 6–7.

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forcement of the principle of limiting the number of apprentices; by which measure, a too rapid increase in the number of workmen, too little care in the selection of boys for the business, and the employment of herds of half men at half wages, to the detriment of good workmen, will be effectively prevented."

But of more significance still is the fact that perhaps the chief motive which started the movement in 1834 toward the formation of the National Typographical Society, was the desire to prevent proposed radical abuses of the free and unlimited use of apprentices and to secure a more uniform and better regulated rule governing them. The "two-thirder" printers were to be found in most localities, and had, from the very beginning, been the cause of much dissatisfaction and of many difficulties. No attempt had, however, been made by any local in the trade to limit the number of apprentices, and the practice was continued for many years later. In fact, it seems evident that, while the union protested vigorously against admitting members who were unable to prove that they had served the required term, nevertheless, at this time, they did not even claim the right to actually limit the number of apprentices entering the trade, and it is doubtful whether any strike had been called by the journeymen in the trade solely to uphold an apprentice rule.

About 1834 the apprenticeship question was raised to importance by an announcement made by the proprietor of an influential paper in Washington, who was also printer to the United States Senate, that he proposed to establish an institute in that city, in which he would engage a large number of boys at a rate much lower than that received by regular journeymen. The Columbia Typographical Society of Washington was intensely excited by this new proposal, and prepared a circular letter of protest to be sent to other leading unions. The agitation continued, and, on March 7, 1834, the Columbia Society passed a resolution "that a committee of seven members be appointed by the

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chair, whose duty it shall be to confer with each other, and report to this Society at their next meeting what, in their opinion, would be the most proper and effectual course to pursue to bring about the establishment of a national typographical society." Some of the most prominent unions responded to the letter and condemned, in strong terms, the proposed institute.[18]

Finally, in 1836, delegates from Baltimore, New York City, Washington, Harrisburg, Philadelphia and New Orleans met in Washington and organized the National Typographical Association, adopted a constitution, and issued addresses to the societies and printers throughout the country. In the address to local societies these bodies were urged to reject any applicant for membership who had not served six years at the trade, also to make it unlawful for any member of the union to work in a shop where boys were taken to serve as apprentices for less than six years. While it is true that the various locals had many other grievances in common, such as the regulation of wages and treatment of members who had "ratted," and while many printers desired the formation of a national union for the discussion and regulation of these grievances, still the agitation of the apprentice question, coming in the precise manner that it did, undoubtedly hastened the movement by causing the unions to see more clearly the necessity of concerted action, if their objects were to be accomplished. In so far, it was largely responsible for the formation of the National Society in 1836.

In commenting upon the importance of the apprentice question, the president of the International Union of Bricklayers spoke to the delegates of the second annual convention as follows: "The system of apprenticeship is the very corner stone of our institution, and it received the earnest attention of the previous convention, and, if the article in our constitution is carried out, it will be a monument that we will be proud of. But the question will be in your hands,

[18] For a fuller account of the controversy between General Duff Green and the Columbia Society, see Stewart, *op. cit.*

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and whatever you in your wisdom think will be beneficial to it, I hope will be adopted."

The cigar makers did not formally enumerate the control of the apprenticeship system as one of the main purposes to be obtained by the formation of an international union. But, in accordance with the spirit of the period, the following clause was inserted in the first constitution of the international union: "No person shall be eligible to membership in the union unless he be a white male of the age of eighteen years, and has served an apprenticeship of not less than three years."[19]

We have seen that the apprentice question was an influence both in the formation of local unions and in the organization of international unions. In some cases, indeed, it was a chief factor, and, in all the skilled trades, it played an important part. As the locals accepted well-established apprenticeship customs as rules of the union, so international unions continued in the main the apprentice regulations in force in the locals. Frequently, a few local unions embrace a large percentage of the membership of the international union, and the apprenticeship rules worked out by these large and influential locals are usually accepted by the central association as indicating the needs of the craft as a whole.

After the international unions had been organized a sufficient length of time for them to see clearly their needs and define accurately their policy, two distinct methods of dealing with the apprentice question developed.

(*a*) In some crafts, such as the building trades and cigar making, the local unions formulated apprenticeship rules and adjusted them according to local environment; and the international union exercised only a general supervisory power, the rules adopted by the local union being submitted to it for approval.

(*b*) In other trades, such as iron molding and glass blowing, the international union early formulated detailed ap-

[19] Journal and Program of the Twentieth Convention of the Cigar Makers' International Union of America, Milwaukee, September 25, 1893, p. 47.

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prenticeship regulations which every local union in any way connected with the international organizations was bound to accept and enforce. In some cases the transition was more gradual; thus full power to determine apprenticeship regulations was not granted the Iron Molders' International Union until 1867, twelve years after it was organized. During that interval the locals made and enforced their own regulations.

Unions regulate apprenticeship by either one of these two methods, according to the nature of the trade, the degree of competition between the employers and the efforts of the employers to control wages. In some industries the different shops were so located and the cost of operation so adjusted that the finished product could be placed in the market at practically the same cost to each manufacturer. Therefore, the right to receive an extra number of apprentices at a wage very much below the rate received by regular journeymen gave a distinct advantage to the competitor possessing this privilege. When the firm was powerful or the union weak, this was not difficult to accomplish. For, although the locals insisted upon the apprenticeship rules as laid down in the local constitution, it was and has always been a matter about which the union hesitates to strike except for continued flagrant abuse. The result was that many employers found it easy, when dealing with the local alone, to engage a far greater number of boys than was allowed under the rules of the union. The consequences were the admission of a large number of poorly-equipped workmen into the trade, a decrease in current wages, and a movement on the part of the leaders of the international union to secure uniform apprentice laws.

In a different class of trades, represented by the cigar makers and the building trades, the local was the unit in regulating all matters in connection with apprenticeship. Because of the character of the industry and the widely differing environments in which it was carried on, a uniform apprenticeship ratio was less desirable than in the trades of

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the preceding group. Little, if any, machinery was used; only a small amount of capital was needed; the work was carried on in practically every locality; and the article manufactured by members of different locals never came into direct competition. In addition, many unions of these trades were small, and located in parts of the country where the trade could be "picked up" in non-union shops.

Attempts have been made at different intervals in several of the trades in this class to introduce a national apprenticeship rule, but without success. In at least one of the building trades such regulations were enacted by the international union during the first years of its existence. This was the Bricklayers' International Union, which immediately upon its organization on October 16, 1865, assumed entire control of the apprentice question, and made uniform provision for all local unions. In his report to the convention, held at Cincinnati, Ohio, in 1867, the president recognized the importance of the system and stated that apprenticeship was "the very corner stone of our institution," and that, if the article of the constitution could be carried out, the union would have achieved a great success. That the law was not successfully enforced was due, at least in part, to the locals themselves. For, in his report to the third convention of the International Union, held in 1868, the president complained that the apprentice question had caused much trouble, because many unions, doubtless in keeping with the old custom of "patrimony," permitted journeymen to receive their sons at the trade in addition to the two apprentices allowed each workman. Furthermore, he stated that, for a long time, it had been the custom in Boston to allow each employer three apprentices, and that, in attempting to reduce the number so that it would conform to the union rule, the local had been greatly weakened, in fact, almost destroyed. At this and the following conference an effort was made to transfer the power of regulating apprenticeship from the International Union to the local bodies, so that it might be adjusted "to suit the contingencies existing in

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their different localities." However, it was not until some time later, when it was seen that the International Union could not successfully enforce the uniform apprentice rule, that all efforts in this direction were abandoned, and the locals assumed entire control, as is the case in all the other unions in the building trades.

Those trades in which the local union has determined the apprenticeship regulations have been recruited in only a small degree by journeymen who have undergone the prescribed course of preliminary training. On the other hand, in the crafts in which the international union enacts these rules, a much larger per cent. of the members have served an apprenticeship under terms prescribed by the union. Having once established a uniform apprenticeship for all union shops of the same trade, the international union has sought to have each local enforce the same within its own jurisdiction. While these rules have been modified from time to time, the international unions have striven to maintain a uniform law, fixing the number of apprentices, the length of service and the method of instruction. The same desire for uniformity has also manifested itself in those trades in which the local formulated the laws; but, under this system of decentralized control, far less progress toward securing it has been made.

In general, we have noted that the unions in the skilled trades early began the struggle for effective apprenticeship regulations, and that two distinct methods in dealing with the subject were developed. But the particular method by which apprentice rules were passed, whether by the international or the local union, was less important than the degree of enforcement. When the international union enacted such laws, final authority as to interpretation, or specific application thereof, was reserved to that body; and the charter of any local could be revoked in case it refused to comply with this decision. Yet, in the last instance, the international union depended upon the local alone to enforce them. This was from the beginning a weakness in the old system of

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apprenticeship and was one cause of its ultimate failure. Moreover, the mere fact that the union alone assumed the right to control apprenticeship regulations, especially to limit the number received, caused the employers to oppose them and to prevent their enforcement whenever possible. A long, bitter struggle ensued. Under such circumstances, it was impossible for either side, acting independently, to maintain an adequate apprenticeship system.

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CHAPTER IV.

Apprenticeship Determined by Trade Agreement.

The continued growth and development of trade unionism and the gradual substitution of collective for individual bargaining rendered less potent the advantage of the employer over the employee. If, at any previous time, employers were unwilling to unite with their journeymen in order to change unsatisfactory conditions, or refused to grant the demands of employees, they were at a later date compelled to do so or to take issue with a strongly organized union. At this stage employers formed associations, after which intelligent representatives from both sides met in joint conference and adjusted, as far as possible, all controversies.

Among the questions thus considered was that of apprenticeship. The adoption of apprentice rules by conciliation, while but fairly begun in many trades, marks the final method of their enforcement, and again emphasizes the fact that, in order to be effective, trade rules must be revised from time to time to meet new conditions.

Collective bargaining has been successfully carried on in the stove branch of the iron molding industry. In connection therewith, apprenticeship has been discussed to a greater extent than in any other trade. In order to clearly understand the far-reaching effect of apprenticeship, the difficulties encountered in regulating it, and the futility of either side independently attempting such regulation, it seems desirable to give in some detail the remarkable struggle over the apprentice question waged by the Stove Founders' National Defense Association, *i. e.*, the employers' association, and the Iron Molders' International Union. This example of conciliation is perhaps a distinctive rather than a typical experience. The struggle carried on by the two organizations in their attempts to reach a satisfactory apprentice

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ratio is, perhaps, without a parallel in the history of any other union. But it indicates, possibly, the future method of regulating apprenticeship.

At the nineteenth session of the Iron Molders' Union, held in 1890, the following resolution was adopted: "Resolved, That it is the sense of this convention that the incoming executive board be empowered to confer with an executive board of the National Defense Association for the purpose of taking into consideration a discussion of the apprentice question as requested by said association. Resolved, That if after said conference it is the unanimous opinion of the executive board that the ratio of apprentices should be in the proportion of twenty per cent. to eighty per cent. an amendment should be submitted to the local unions, said local unions to vote 'aye' and 'nay,' and it shall require a two-thirds vote to carry said amendment."[20]

The only feature of apprentice regulation considered at the first joint conference, held in Chicago, March 25, 1891, was the limitation of the number of boys; and this question remained the dominant issue in all subsequent discussions of apprenticeship. At the first conference neither side possessed adequate data upon which to base a just ratio, and, after passing the following resolutions, the subject was dismissed. "Whereas the average term of a molder's productive capacity is found by statistical information to be not more than fourteen and a half years and that the law of the Iron Molders' Union restricting the proportion of apprentices to one to eight, with one for each shop, compels manufacturers by necessity to disregard such proportion and operate open shops in order to supply the demand; therefore, it is requisite that the question receive an immediate investigation and readjustment upon a reasonable basis."

At the second conference, in 1892, the first measure considered was one designed to change and liberalize the apprenticeship rules of the union. The principles which the members of the conference decided should be incorporated

[20] Proceedings of the Nineteenth Convention of the Iron Molders' Union, 1890, p. 83.

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in an agreement between the two organizations were set forth in three different articles. The first of these had reference to the limitation of apprentices, and the second and third related to the term of service and to the manner in which instruction should be given those received. In commenting upon the proposed changes, the editor of the Iron Molders' Journal said that "the three above clauses were unanimously agreed upon after the most careful consideration as a measure that would tend to harmonize differences between the two organizations on account of the restrictions and exactions under our present system."[21]

Although considerable pressure was brought to bear by the leaders of the union when urging their members to grant the proposed increase of apprentices, nevertheless, when a circular calling for a vote thereon was submitted, the second and third articles were accepted, but the first article, providing for additional apprentices, was rejected.

When addressing the twentieth convention of the Iron Molders' Union, held in 1895, President Fox of that organization stated that, by special inquiry on his travels, he had found that, in some places, fewer apprentices than allowed by the union ratio, that is, one to every eight journeymen, were at work; in other places there were as many apprentices as journeymen, and in still other localities apprentices were largely in the majority. Furthermore, a general average of the number at bench and stove molding revealed a ratio of one to four. The ratio of one to six could, he thought, soon be allowed by the union. But the convention did not meet again until March, 1899. All negotiations were conducted at the conference, where both parties yielded on the apprentice ratio only when other concessions were granted in connection with wages. At one time, Mr. Castle of the Defense Association offered a resolution to abolish the "berkshire" system, provided an apprentice ratio of one to four were allowed. President Fox replied: "The 'berkshire' system exists in very few of the stove shops today, and I believe the day is near at hand when it will pass

[21] Iron Molders' Journal, February, 1892, p. 5.

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away entirely. For the sole purpose of securing its abolition, I do not feel justified in advocating a change in our ratio, but in order that our position might be strengthened and to demonstrate that ours is not an arbitrary and unjustifiable one, I would suggest that statistics be secured from all local unions and on the line of those asked for in the editorial columns of the June Journal, and that they be submitted to the executive board to take such action or make such recommendations as in their judgment seems necessary. Should they determine that a change of the ratio be advisable, a suitable amendment ought to be drawn up and submitted for the referendum vote."[22]

In the spring of 1901, after the collection of much evidence by both sides, it was agreed by those at the conference that the legitimate needs of the trade demanded an apprentice ratio of one to five, and accordingly, after much favorable comment and persuasion through the columns of the Journal, the proposition was submitted to members of the union for action. Returns were not made by more than two fifths of the membership. Still the one to five proposition was overwhelmingly defeated by a vote of 15,842 to 504. A proposition submitted at the same time to establish a ratio greater than one to five and less than one to eight met a similar fate by a vote of 12,314 to 3,978.

This vote manifested an extreme conservatism which was hardly short of stubbornness on the part of the members of the local unions, who thus refused for a second time to sanction a proposition based upon data collected by both sides; one, moreover, which every leader of the union advocated, and the rejection of which threatened to cause a serious rupture in the friendly relations existing between the Iron Molders' Union and the Defense Association. The ratio of one to eight had been embodied in the laws of the union for about forty years. Moreover, since the beginning of the conferences in 1891, the supply of workmen ordinarily received during strikes had been largely cut off. In fact, there was little doubt that, if the union ratio had been strictly adhered

[22] Iron Molders' Journal, April, 1899, p. 162.

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to, the supply of journeymen would have been inadequate to meet the legitimate demands of the trade.

It would seem that such a decisive expression of opinion as the recorded vote indicated would have settled the matter for at least a few years; but President Fox, undaunted by the result, presented a most vigorous report on the subject to the convention of the iron molders, which convened in 1902. He not only expressed his disappointment at the defeat of the proposition, but, in a measure, attacked the system of referendum voting, and ventured the opinion that the matter should be placed in the hands of the leaders of the union, who are always most active in bringing about the needed reforms. He declared that "while the referendum vote is undoubtedly founded upon correct principles, the result of its use in labor organizations has not always been in harmony with progressive thought. It is an unfortunate fact, but truth compels me to say it, that our members do not give important questions submitted to their decision the careful study and intelligent thought they should, but allow themselves to be swayed by their prejudices or their fears, or display by their indifference and their failure to record their opinion their lack of interest in propositions submitted. In my experience with the Iron Molders' Union—and it is the experience of nearly every labor organization—it has devolved upon the higher intelligence of the leaders of our membership in convention assembled to initiate important reforms or take advanced ground in our movement. It seems to me our laws should be such as would permit us to adapt them readily to extraordinary emergencies. In this connection I was deeply and favorably impressed by a statement of Brother D. A. Hays, president of the Glass Bottle Blowers' Association, in a recent article. Referring to the agreement of his organization with the Manufacturers' Association on the regulation of apprentices, he says that, 'in 1893, owing to the general depression in business, many of our men were idle, and the Manufacturers' Association, realizing that to increase the number of blowers would be

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to put an additional burden upon us, voluntarily agreed to take no new apprentices for that year. In like manner, we last year, finding that under the prosperous condition of the glass industry, the number of apprentices to which the manufacturers were entitled under the former agreement between the two associations would not be sufficient to meet their requirements, voluntarily increased the number of apprentices.' This to my view is a very equitable arrangement."

These strong words of the president were addressed to the convention of iron molders held in 1902, at which meeting special efforts were made to increase the ratio of apprentices. A committee from the Defense Association attended the session, and stated upon the floor of the convention the conditions of the trade and their imperative need for additional apprentices. The remarks of the employers were supplemented, enforced and recommended by the officers of the Iron Molders' Union. The committee appointed to consider the apprentice question reported that, after hearing the representatives of the Defense Association and believing that trade conditions warranted such a change, they recommended the adoption of an apprentice ratio of one to six. A minority report of the committee recommended a ratio of one to seven. An additional resolution was introduced granting power to the national officers to negotiate an agreement with the employers, but, on the final vote, the three propositions were voted down, and the ratio of one to eight continued in force. Two reasons may be given for this action. In the first place, the employers had asked for the radical change of ratio from one to eight to one to four. At no time was there any hope that the convention would grant such an increase, while the mere asking aroused the suspicions of the delegates as to the good intentions of the employers. Again, the impracticability of administering a law of limited application, for the ratio voted upon was to apply only to members of the National Defense Association, was recognized, and it was

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urged that the application of such a law would lead to serious difficulties.

When the proposition to allow the ratio of one to five met an overwhelming defeat in the vote of 1901, the friendly relations between the Iron Molders' Union and the Defense Association were seriously threatened, as the employers frankly stated that the legitimate business demands necessitated additional apprentices. However, the crisis was happily though illegally averted, for, in March, 1902, temporary arrangements were made whereby employers who under the existing ratio could not secure enough molders were given the privilege of taking on additional boys, provided a careful investigation had been made and the claims of the employer confirmed. In making such an agreement, the officers of the union exceeded their legal authority. But since the members had been obstinate in refusing a more liberal ratio, it was in their opinion a case of the end justifying the means, so that instead of severing relations with the Defense Association, they arranged to evade the law and grant the much needed apprentices. In reporting this agreement to the convention, the president urged that body to approve the action taken, but without success.

At the conference held March 19, 1903, the employers presented a resolution which provided that the limitation of apprentices should be discontinued for one year, that the president of each association or their representatives should be given the power to determine the number of apprentices to be received by an employer, and that all apprentices should serve four years. The molders introduced a resolution to the effect that, when an employer suffered from an insufficient number of journeymen, he should report to the president of the Defense Association. If he found the condition as represented, he should call the attention of the president of the Iron Molders' Union, whose duty it would be to take up the matter with the local concerned and urge them to give relief. Both propositions were finally withdrawn.

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At the Chicago conference held in March, 1904, a resolution was unanimously adopted, which stated "that in view of the fact that no agreement has been reached by and between the Defense Association and the Iron Molders' Union on the apprentice question and because of the fact that there is a possibility of more or less friction, it is agreed that, whenever a member of the Defense Association finds he cannot secure the molders he may require for the needs of his business, the question shall be referred to the presidents of the two associations or their representatives for investigation and relief. If it be found that the foundryman is entitled to relief, he shall be allowed to employ such additional number of apprentices as shall be mutually agreed upon."

The conference in March, 1904, was called by the employers to consider a reduction of fifteen per cent. in wages. No reduction was granted, but the concession on the apprentice ratio was agreed to. Statistics given by the employers at this conference demonstrated that the ratio in foundries operated by their members was slightly above one to five, and in independent shops a fraction above one to four. These data had been verified by officers of the Iron Molders' Union, and were regarded as correct by both parties. At a meeting of the executive board of the Iron Molders' Union, June 18, 1904, the conference agreement of one to five was approved, but it was to apply only to Association foundries. In September, 1904, a circular was issued from the headquarters of the Iron Molders' Union calling for a vote on the question of empowering the conference committee of the Iron Molders' Union to enter into an agreement with the Stove Founders' Defense Association in order to establish an apprentice ratio of one to five in foundries controlled by members of that Association. The leaders of the union exerted all possible influence within their power to carry this proposition. It was approved by the executive board, by a meeting of business agents, by prominent ex-officials. The September and October num-

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bers of the journal were also devoted to its discussion with the result that, in December, 1904, it was carried by a small majority. Thus ended a long weary struggle of thirteen years, carried on by the Defense Association and by officials of the Iron Molders' Union to increase the number of apprentices in shops devoted to stove molding.

The policy of the Iron Molders in submitting the apprenticeship rules to arbitration is typical of the present treatment of such rules in many leading trades, especially in those crafts in which the employers have formed organizations. Perhaps the most striking feature of the plan in the Glass Blowers is the businesslike manner in which the ratio may be adjusted to the actual needs of the trade.

Another important development, doubtless brought forward by submitting the apprenticeship rules to conciliation, was the collection of data concerning apprenticeship from the shops in active operation. This practice undoubtedly arose out of the need of the board of conciliation for exact information on which to base the apprentice ratio. As there is no evidence that any systematic collection of information was attempted by the early unions, it seems clear that the early unions did nothing more than make a guess at the number of apprentices needed in each trade. In commenting upon the subject, a prominent member of the union remarked that " the apprentice ratio was of our own creation, of arbitrary construction, and could not even plead scientific exactness as an excuse for its existence. Those who were responsible for the one to eight ratio could not defend it save as an arbitrary limitation. It was a mere guess at what would be a fair thing."[28]

The same can be said of practically every trade, for the union leaders admit that no adequate collection of data nor scientific study as to what should be the real ratio has been made. As a result, the ratio established was often unfair, and in many cases was disregarded by the employers. In fact, it was argued by those desiring a rigidly enforced

[28] Iron Molders' Journal, September, 1904, p. 663.

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uniform ratio that such a law, even though the ratio were low, would produce no more journeymen than would be allowed where the ratio was high but not enforced. In commenting upon the desirability of establishing a uniform ratio of apprentices, the editor of the Iron Molders' Journal gave as his opinion that "a careful reading of the various articles bearing upon the apprentice question, in the September and October Journals, will remove the opinion held by some that changing the ratio from one to eight to one to five would increase the number of apprentices employed in the stove foundries. The change, if made, would only be a change of figures and not a change in reality, as the average ratio in existence to-day is practically one to five. It has been at this ratio for the past forty years, and, before that time, it was even larger. It would mean, however, that the stove manufacturers, who to-day employ one boy to every two or three journeymen, would be reduced to one to five, while the manufacturer, who employed one to eight, would be given the opportunity of increasing the number of apprentices in his employ. The total number of apprentices employed in the country would not be increased, but, instead of the present unsatisfactory condition that exists where one employer has a ratio of one to two while the other is limited to one to eight, all stove manufacturers would be placed upon an equality."[24]

The general purpose of the apprenticeship system, namely, to provide an adequate supply of competent workmen, has been practically the same from the beginning of the trades in this country to the present time, but special phases of it have been emphasized at different periods. During the early period, the master was not restricted in employing apprentices, and often engaged a large number in order to receive the benefit of their low wages. The opposite tendency was emphasized by the union; for the interest of the journeyman was largely considered, and a rigid limi-

[24] Iron Molders' Journal, October, 1904, p. 750.

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tation made of the number received. The feature, greatly emphasized at the present time especially in those trades in which the finished product enters into keen competition, is the uniform ratio for all competing shops. In securing this object, conciliation has been the method most generally adopted.

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PART II.

DESCRIPTIVE.

CHAPTER I.

EXTENT OF PRESENT UNION APPRENTICESHIP REGULATIONS.

Of the one hundred and twenty national and international trade unions with a total of 1,676,200 members, affiliated in 1904 with the American Federation of Labor, fifty unions, with a membership of 766,417, do not attempt to maintain apprenticeship systems. These fifty unions may be divided into four classes.

(*a*) Thirty-five unions of unskilled workmen form the first group.[25] The workmen in these unions, by serving

[25] Agents Association, American.
Bill Posters and Billers of America, The National Alliance of.
Blast Furnace Workers and Smelters of America, International Association of.
Brick, Tile and Terra Cotta Workers' Alliance, International.
Bridge and Structural Iron Workers, International Association of.
Car Workers, International Association of.
Clothing Makers, Special Order of.
Flour and Cereal Mill Employes, International Union of.
Garment Workers of America, The United.
Glass House Employees, International Association of.
Heat, Frost, General Insulators and Asbestos Workers of America, National Association of.
Hod Carriers and Building Laborers' Union of America, International.
Hotel and Restaurant Employees, International Alliance, and Bartenders' International League of America.
Interior Freight Handlers' and Warehousemen's International Union.
Ladies' Garment Workers' Union, International.
Letter Carriers of the United States of America, National Association of.
Longshoremen, Marine and Transport Workers' Association, International.
Maintenance-of-Way Employees, International Brotherhood of.
Mattress, Spring and Bedding Workers' International Union.
Mine Workers of America, United.

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a short time with their fellow workmen as instructors, obtain a knowledge of the work which enables them to perform it in a satisfactory manner. Many workmen engaged in these industries were formerly employed in one of the more skilled trades, but through inability or misfortune, have been forced into places where less skill is demanded. For example, the membership of the Bridge and Structural Iron Workers' Union includes many workmen who were previously employed as sailors, ship builders, or in one of the building trades. The short period of training required of the structural iron worker and the high wage usually paid to him, due to the risk involved and the effective organization maintained, induce those who have not thoroughly mastered their own craft or have lost their former position to enter the trade. Apprentice requirements are not demanded of applicants seeking admission to these unions for the obvious reason that men of ordinary ability and physical endurance are, after a very short period of training, sufficiently competent to perform the required work.

(*b*) The second group numbers eleven unions, including four not affiliated with the Federation of Labor.[26] Seven

Oil and Gas Well Workers, International Brotherhood of.
Paper Box Workers' International Union of America.
Paper Makers of America, United Brotherhood of.
Quarry Workers' International Union of North America.
Rubber Workers' Union of America, Amalgamated.
Seamen's Union of America, International.
Shirt, Waist and Laundry Workers' International Union.
Spinners Association of America, National.
Street and Electric Railway Employees of America, Amalgamated Association of.
Switchmen's Union of North America.
Teamsters, International Brotherhood of.
Textile Workers of America, United.
Theatrical Stage Employees of the United States and Canada, International Alliance of.
Tin Plate Workers' International Protective Association of America.
Tobacco Workers' International Union.
[26] Coal Hoisting Engineers, National Brotherhood of.
Commercial Telegraphers' Union of America.
Locomotive Engineers, Grand International Brotherhood of.
Locomotive Firemen, Brotherhood of.

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out of the eleven are railway unions. In these trades, highly skilled and well trained service is required; but the unions have never maintained apprenticeship regulations. Those engaged in any of the trades contained in this other class do receive a rigid and often a long training. The terms demanded of beginners, as well as any future promotion of employees, are, however, matters not under the direction of the union but entirely within the control of the employers. This is made imperative from the nature and importance of the work to be performed. The trades of this group represent activities that must, in order to properly protect human life and valuable property, be performed with great promptness and care. For example, the telegrapher must be so accurate in transmitting his messages and so prompt in reporting or dispatching his trains that all those desiring to learn the trade must not simply engage themselves for a stated term of years, as is required of regular apprentices in most other trades, but must serve until they have acquired sufficient skill to assure the employer that they are competent and may be safely trusted in responsible positions. Moreover, some of the trades in this group are recruited by promotion from a less skilled, but intimately associated craft. Thus the heavy physical labor performed by members of the International Brotherhood of Stationary Firemen requires the strength and endurance of men rather than of boys, and, therefore, this union maintains no regular system of apprenticeship. But the constant intimate relations of the fireman and the engineer enable the former to gain gradually a practical knowledge of the duties of the latter, and it is in this manner that most engineers are trained. There is not the slightest opportunity for a boy to learn this trade as an

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Railroad Telegraphers, The Order of.
Railroad Trainmen, Brotherhood of.
Railway Clerks, International Association of.
Railway Conductors of America, Order of.
Railway Expressmen of America, Brotherhood of.
Stationary Firemen, International Brotherhood of.
Steam Engineers, International Union of.

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ordinary apprentice. A majority of the members in these unions began in a humble way with a railway company, and have gradually worked their way up to their present positions.

(*c*) In trades of the third class, a minute subdivision of the processes of production has been made, accompanied in most cases by the introduction of machinery. The operation performed by each particular individual, instead of being complex or multiple as formerly, when one person completed the entire product, has become very simple. In the large plants, therefore, where the division of labor has taken place, all apprentice requirements have been abolished. About seven trades may be placed in this class.[26a] However, it must not be inferred that in such trades no skilled workmen are employed. On the contrary, a part of the workmen develop remarkable skill, and are reckoned as high-priced men, although possessing slight, if any, ability in making other parts of the same article. If, however, the artisan possesses sufficient ability and is adept in the use of his tools, he is able to perform the work in a satisfactory manner after, at the greatest, one year's time.

While machinery is greatly used in these trades the old processes have not been entirely dispensed with. Thus, at the present time, in some places shoes are made exclusively by hand; in others, almost entirely by machinery; while, in still other factories, both methods are used. A beginner who wishes to learn the trade in a shop where only hand workers are employed is required to serve a long term as an apprentice that he may become an all-round, highly skilled workman. But the boy who enters a large factory for the purpose of learning the trade finds

[26a] Boot and Shoe Workers' Union.
Carriage and Wagon Workers' International Union of North America.
Garment Workers of America, The United.
Glove Workers' Union of America, International.
Meat Cutters and Butcher Workmen of North America, Amalgamated.
Tack Makers' Protective Union of the United States and Canada.
Textile Workers of America, United.

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an opportunity to acquaint himself with only one or two parts of it, and is not compelled to serve an apprenticeship. Certainly, it is true in the boot and shoe industry, and doubtless in all other trades of this group, that a very large percentage of the articles produced are manufactured in large factories, where the most important machinery is used. These plants disclose the real tendencies and conditions of these trades, and in such establishments the apprentice is no longer found.

In the wagon and carriage making industry, this tendency has been marked. So extensively has machinery been introduced in a certain wagon factory that, to quote the exact language of the informant of the present writer, "the chief duty of the wagonmaker in that factory is to carry material to and from the machine. Furthermore, the wages of practically every employee is scarcely above that of the ordinary laborer, for in reality subdivision has been carried so far that those engaged therein perform a grade of work hardly above that of the average laborer." Only a small number of carriage and wagon factories are operated on such an extensive scale as the plant mentioned; and the conditions in that factory are not typical of the trade in general. In smaller factories or in shops where the latest improved machinery has not been installed those engaged therein are required to perform not one but many different operations, and many skilled workmen are found in such places. But the Carriage and Wagon Workers' Union does not demand any special qualifications for its members other than that the applicant must be engaged at the trade and be of good moral character. Extensive use of machinery and minute subdivision of labor in the same way have greatly simplified the work of the textile worker, so that the labor used in this industry at the present time is supplied in the main by women and children, who are not required to serve an apprenticeship.

The general effect of the subdivision of labor and the introduction of machinery on all the trades of this group

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has been to lower their members almost to the rank of unskilled workers. Certainly, the number of highly skilled workmen engaged in these industries is far smaller than formerly; and in consequence these trades have been reduced from their former position as highly skilled crafts.

(*d*) Finally, a few unions, affiliated with the American Federation of Labor, represent professions rather than trades. This group includes the Actors' National Protective Union and the American Federation of Musicians. These unions maintain no apprenticeship rules.

It is evident, from the foregoing, that a majority of the unions in which apprenticeship is not a prerequisite to membership are composed of members who perform unskilled labor. Ordinary intelligence and physical strength are the qualities chiefly required from these workers. Apprenticeship rules have, therefore, never been enforced in these crafts.

As has been said, about fifty unions do not maintain a system of apprenticeship. The remaining national unions, that is, about seventy of the one hundred and twenty affiliated in 1904 with the American Federation of Labor, with a membership of 900,000, together with some half-dozen unaffiliated national unions, attempt, more or less successfully, to enforce apprenticeship regulations.[27]

[27] Bakery and Confectionery Workers' International Union.
Barbers' International Union of America, Journeymen.
Blacksmiths and Helpers, International Brotherhood of.
Boiler Makers and Iron Shipbuilders of America, Brotherhood of.
Bookbinders, International Brotherhood of.
Bricklayers and Masons' International Union of America.
Broom and Whisk Makers' Union, International.
Brushmakers' International Union.
Carpenters and Joiners, Amalgamated Society of.
Carpenters and Joiners, United Brotherhood of.
Cement Workers, American Brotherhood of.
Ceramic, Mosaic and Encaustic Tile Layers and Helpers' International Union.
Chainmakers' National Union of the United States of America.
Cigar Makers' International Union of America.
Cloth Hat and Cap-Makers of North America, United.
Coopers' International Union of North America.
Elastic Goring Weavers' Amalgamated Association of the United States of America.
Electrical Workers, International Brotherhood of.

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Of these seventy trades, only nineteen actually succeed in

Elevator Constructors, International Union of.
Flint Glass Workers' Union, American.
Fur Workers of the United States and Canada, International Association of.
Glass Bottle Blowers' Association of the United States and Canada.
Glass Workers' International Association of America, Amalgamated.
Gold Beaters' National Union of America, United.
Granite Cutters' International Association of America.
Hatters of North America, United.
Horseshoers' International Union of the United States and Canada, Journeymen.
Iron Molders' Union of North America.
Iron, Steel and Tin Workers of the United States, National Amalgamated Association of.
Lace Operatives of America, Chartered Society of the Amalgamated.
Machine Printers' Beneficial Association of the United States.
Machinists, International Association of.
Marble Workers, International Association of.
Metal Mechanics, International Association of Allied.
Metal Polishers, Buffers, Platers, Brass Molders, Brass and Silver Workers' International Union of North America.
Metal Workers' International Union, United.
Painters, Decorators and Paper Hangers of America, Brotherhood of.
Pattern Makers' League of North America.
Paving Cutters' Union of the United States of America.
Photo-Engravers' Union of North America, International.
Piano and Organ Workers' International Union of America.
Pilots' Association, International.
Plumbers, Gas Fitters, Steam Fitters and Steam Fitters' Helpers of the United States and Canada, United Association of Journeymen.
Potters, National Brotherhood of Operative.
Print Cutters' Association of America.
Printing Pressmen and Assistants' Union of North America, International.
Saw Smiths' Union of North America.
Sheet Metal Workers' International Alliance, Amalgamated.
Shipwrights, Joiners and Caulkers' Union of America, International.
Slate and Tile Roofers' Union of America, The International.
Steam, Hot Water, and Power Pipe Fitters and Helpers, International Association of.
Steel and Copper Plate Printers' Union of North America, The International.
Stereotypers' and Electrotypers' Union of North America, International.
Stone Cutters' Association of North America, Journeymen.
Table Knife Grinders' National Union of the United States.
Tailors' Union of America, The Journeymen.
Tip Printers, International Brotherhood of.

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enforcing apprenticeship as a prerequisite to membership.[28] Certain striking trade characteristics enable these unions to enforce their apprenticeship rules. (*a*) In the first place, there is a demand in these trades for highly trained workmen. Except in the hat and lace curtain industries, no inventions have revolutionized the methods of production in these trades, nor has the work been subdivided to any large extent.

(*b*) Secondly, many of these industries are highly localized, and the localization intensifies and perpetuates the customs and traditions of the trade. It has long been a custom for the apprentice boys in these trades to serve a long term;

Travelers' Goods and Leather Novelty Workers' International Union of America.
Typographia, Deutsch-Amerikanischen.
Typographical Union, International.
Upholsterers' International Union of North America.
Watch Case Engravers' International Association of America.
Window Glass Cutters' League of North America.
Window Glass Cutters' and Flatteners' Association of America.
Window Glass Snappers.
Wire Drawers, American Association of.
Wire Weavers' Benevolent and Protective Association, American.
Wood Carvers' Association of North America, International.
Wood, Wire and Metal Lathers' International Union.
Wood-Workers' International Union of America, Amalgamated.
[28] Bricklayers' and Masons' International Union of America.
Elastic Goring Weavers' Amalgamated Association of the United States of America.
Flint Glass Workers' Union, American.
Glass Bottle Blowers' Association of the United States and Canada.
Gold Beaters' National Union of America, United.
Granite Cutters' International Association of America.
Hatters of North America, United.
Iron Molders' Union of North America.
Lace Operatives of America, Chartered Society of the Amalgamated.
Marble Workers, International Association of.
Metal Polishers, Buffers, Platers, Brass Molders, Brass and Silver Workers' International Union of North America.
Pattern Makers' League of North America.
Print Cutters' Association of America.
Saw Smiths' Union of North America.
Stereotypers' and Electrotypers' Union of North America, International.
Typographia, Deutsch-Amerikanischen.
Window Glass Cutters' League of North America.
Window Glass Cutters' and Flatteners' Association of America.
Window Glass Snappers.

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and the unions will not dispense with this practice, unless they are forced to yield by trade and economic conditions.

(*c*) In the third place, these unions are exceedingly well organized. They maintain strong locals in practically every community in which the industry is carried on, and have enrolled as members a large majority of those employed at the craft.

The small number of artisans employed in some of these trades undoubtedly makes possible the more rigorous and effective enforcement of the apprenticeship rules. The secretary-treasurer of the pattern makers states: "Now and then a man may work from another trade into ours; but the number is so small that it is practically nil and does not throughout the entire country and Canada average ten per year. Graduates from the trade schools also, as far as we can learn, go into the shops and serve a regular apprenticeship. This, in a great measure, is due to the fact that of all the trades, pattern making combines a greater amount of intelligence and skill than is required in any other, and, to follow it successfully, a workman must have a thorough knowledge of all kinds of molding and drafting. The number of apprentices working at the business is also satisfactory to the organization, as, during the last year, but one complaint was entered by a local as to any shops working more than our rules called for. There are, though, throughout the country some few shops in which the limit of apprenticeship as laid down in the rules is exceeded, but this is by tacit arrangement with the local organizations, as the number of journeymen employed in these instances is so out of proportion to the average shop that to enforce this rule would be an injustice. These shops (five in number) are, with no exception, in localities organized to such an extent that, were it found advisable to limit the number of apprentices, it could no doubt be done. I can state for our organization that so far as the apprenticeship system is concerned, both as relates to the serving of same and number concerned, it is satisfactory."

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The print cutters, the elastic goring weavers and the German printers are established in only a very small number of cities. In all these trades the union controls practically the entire membership of each craft, so that a large majority of those beginning any one of these trades at the present time really serve the regular union apprenticeship term.[29]

The elastic goring weavers and the German printers represent trades in which there has been a steady decline in the demand for artisans, resulting in a gradual decrease in the membership. The elastic goring weavers have, from the beginning of the industry in this country, succeeded in organizing practically all the skilled workmen employed at the trade. The membership has never been large; for, in 1895, when the trade enjoyed its maximum prosperity, the secretary of the union reported a total of only three hundred and fifty members; and he stated furthermore that only a few men were employed in the industry outside of the union shops. Members of this trade are employed in the manufacture of the elastic web used in congress shoes. With the passing of that style of footwear, this industry experienced a serious and steady decline, with the result that several factories were closed. No member of the union has been permitted for some years to receive an apprentice without the consent of the local union. This rule has excluded practically all apprentices from the trade.

However, the mere fact that only a small number are employed at a trade does not necessarily insure its control

[29] The Lace Curtain Operatives, organized in 1892, show the power of a small, well-organized union. In 1893 it included eight locals with a total of five hundred and sixty members. But two non-union shops were operated at that date, and they furnished employment for about one hundred lace makers. Upon the passage of the McKinley tariff, this industry was greatly stimulated and the demand for workers was very much increased, but, as there were no unemployed and the regular term of apprenticeship required of all beginners at the trade was three years, it was impossible to supply them at once from this source, and employers were compelled to seek skilled workmen elsewhere. The secretary stated that in 1903 perhaps two thirds of the total membership were foreigners. At one time, when the union was unable to supply enough workmen to satisfy the legitimate demands of a large manufacturing company of Philadelphia, the firm was permitted to receive twenty additional apprentices. Three special journeymen were detailed to instruct them.

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to the union. For example, watch case engraving, a highly skilled trade at which beginners are required to serve a long apprenticeship and one at which comparatively few can find employment, is also one in which it is very difficult for the union to exercise a rigid supervision over the entire industry. Any one wishing to learn the trade is often able to find an opportunity in special schools or in the small non-union jewelry shop, over which the union cannot exercise any control. The secretary-treasurer states that "some of the manufacturers have been in the habit of hiring a large number of boys and teaching them one small part of the engraving trade. The consequence is that there are a large number of so-called engravers traveling around the country who, if rated according to their ability, are nothing more or less than apprentices. As one of the objects of this association is the elevation of our craft, we have restricted the employment of apprentices, and, at the same time, have made it the duty of the shop committee to see that the members of the association do all in their power to teach the apprentices that are now employed in their respective factories the engraving trade in full, and try to turn out full-fledged artists at the expiration of the five years which they have to serve."

The inability of these unions to control completely the number of apprentices learning the trade is due (*a*) to the presence of non-union shops, (*b*) to the weakness of some local unions.

(*a*) Although the unions in these trades embrace a very large per cent. of the men engaged in each craft, still, in all of them, some non-union shops may be found. In such shops the number of apprentices is usually large.[30]

(*b*) Some local unions in practically every trade are weak and unable to enforce apprenticeship regulations. These weaker unions always vigorously oppose any movement on

[30] The Bricklayers and Masons, the Granite Cutters, the Saw Smiths and the Hatters are strongly organized, but much work is carried on in each trade entirely apart from union influence. The Saw Smiths' Union, which is composed of a very small number of locals, has not succeeded in organizing one of the largest shops in the trade.

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the part of the employer that would in any way directly decrease the rate of wages or increase the length of the working day, but they are not always equally watchful and energetic to enforce the rule limiting the number of apprentices.

While fifty or more of the trades attempting to maintain apprentice rules are only partially successful in their design, many strongly organized local unions in each of these industries are able rigidly to enforce apprenticeship regulations within their own jurisdiction. This is well illustrated by locals in the building trades, the metal polishers, the machinists and the cigar makers. In each of these trades, as of all others in the same class, perhaps less than one half of those working as journeymen have served the prescribed apprenticeship term in union shops; but, in many strong locals, none are permitted to learn except under the rules of the union.

As previously noted, a few industries have been subdivided to such an extent that apprenticeship regulations have been dispensed with; and other trades, because of new inventions and minute subdivision of labor, are rapidly approaching this condition. In tracing the development in the methods of production and noting the reflex influence of these changes upon the apprenticeship rules, three distinct stages are revealed.

(*a*) During the early period, one or at the most a few journeymen, who had undergone a long apprenticeship and possessed detailed knowledge of the trade, worked by hand with a few simple tools and completed the entire article. The process of production necessarily proceeded slowly, and the output was comparatively small and could not be increased to any great extent until more journeymen were trained and equipped with tools.

(*b*) With the improvement of the instruments of production, so that steam or electrical power could be utilized in operating them, the employer found it more profitable to apportion the work among several journeymen rather than to have each artisan make the completed product. The old

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apprenticeship rules were continued as long as possible; but, since many refused to spend several years in learning the entire trade, when in actual service they would be required to perform only a portion of it, the union soon experienced great difficulty in maintaining its rules. The term of service was rarely if ever shortened by the union. The result has been that neither party greatly respected the rules governing apprentices; and, as they could not be strictly enforced, many poorly trained journeymen gained entrance into the trade.

(*c*) The third stage, attained as yet by only a few trades, is reached when the subdivision of labor has been carried so far that skilled labor is largely supplanted by unskilled labor, in some cases by women and children.

Great difficulty is encountered in regulating apprenticeship for trades in which both the old and the newer methods of production are employed. For example, in carpentry the work performed ranges from that done by "hatchet and saw" workmen to the service rendered by the highly skilled artisan engaged upon the finest and most difficult work. Many years of training, together with more than ordinary native ability, are requisites for those who succeed at the latter branch of the work. The "hatchet and saw" carpenter picks up his trade in a short while.

At the present time a large majority of the trades which attempt with difficulty the enforcement of apprenticeship rules are passing through the second stage, some beginning it, others nearing the end, according to the extent and perfection of the machinery used. In still others, notably in the boot and shoe industry, shops may be found in which the old hand-methods are used side by side with large factories in which the latest improved machinery has been installed.

This study of the present condition of the apprenticeship regulations is not based simply upon the trades in which a very large percentage of the journeymen have completed their apprenticeship term in the prescribed manner, but also upon the seventy different trades in which the union attempts, whether successfully or not, to enforce rigid rules governing apprenticeship.

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CHAPTER II.

Apprenticeship Regulation and its Purpose.

Uniformity of Apprentice Regulation.—Trade-union apprenticeship regulations are formulated in some cases by the local branches; in others, by the national unions. In the building trades and among the jewelry workers and the cigar makers, for example, apprenticeship regulation is a local matter. Several reasons for this policy, especially in connection with the building trades, may be noted.

(*a*) In the first place, the principal crafts represented have retained much of the traditional idea of a trade. Each workman carries his tools with him as he journeys from place to place. In the older trades, such as carpentry, bricklaying, stone-cutting and lathing, many customs in vogue before the formation of unions have been preserved, and are still practiced.[81] Again, although machinery or improved tools have been introduced in practically all these trades and subdivision of work has made rapid progress in some of them, notably carpentry, subdivision of labor has not reached the stage wherein the all-round workman is not needed. Both employer and union prefer the fully trained mechanic to the specialist. Neither the introduction of machinery nor subdivision of labor has caused any reduction in the nominal term of apprenticeship. Moreover, the uniform conditions found in other crafts, due largely to competition in the sale of the article produced, do not exist throughout

[81] A peculiar practice of this character still survives among the paper hangers in the city of Cleveland. Each journeyman is required to provide himself with a small hand-cart, in which he pushes his tools and material from place to place over the city. In some cases this becomes a heavy burden, since the workmen may be compelled to walk ten or twelve miles in a single day. Old members are frequently allowed a helper, who pushes the cart from one job to another. The entire outfit for each journeyman costs about twenty-five dollars.

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these trades; and, consequently, conditions in one community do not materially affect those in another. A distinction is, however, to be noted in these trades between the inside workman or shopman and the outside workman. The former has a fixed place of labor. The material comes to him in the rough, and is taken away as a finished product, ready for the market. In this branch of the industry competition in the article manufactured may to some extent regulate and make uniform the conditions under which it is produced; although, even here, competition is often prevented or seriously hampered by the rules of the international union.[32] On the other hand, the outside workman goes wherever employment is to be found, but the product of his labor is not shipped. In some cases both classes exist in the same trade, notably in carpentry, stone-cutting and structural iron work. Mechanics pass easily from one class to the other, and have the same apprenticeship rules.

(*b*) Again, many of these trades are characterized by great irregularity of employment, resulting from the nature of the work done, variations in weather and changes of season. The journeyman is certain of a job only until the one upon which he is engaged is completed. At least a day or two must intervene between jobs, during which time no wages are received. Employment for seven or eight months of the year is a conservative estimate of the actual working time of the average journeyman in such industries. To this should be added the fact that, in these trades, there is a great need for quick, effective execution of a new policy or for the immediate enforcement of a shop rule. A short delay, and the particular job may be completed.[33]

[32] The Journeymen Stone Cutters' Association will not permit the transportation of cut stone from one place to another unless the wages and hours are equal, except in cases where the exchange between different branches is mutually agreed upon. More than this, provision is made that planer work is not to be shipped to the cities where the unions have succeeded in preventing the introduction of machinery. See Constitution (Washington, 1900), Article XII.

[33] So urgent has been the need in this regard that some unions have given the business agent power to call a strike. This policy in turn has led to flagrant abuses, and the authority has in some cases been transferred to a grievance committee.

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The two conditions last noted are responsible for the absence of uniformity in this group of trades. Each local union has its own difficulties to be adjusted according to local circumstances. Shop rules under such conditions can, therefore, best meet actual needs where determined by the local unions; and the apprenticeship regulations are so framed. The international unions make provision for apprenticeship and submit general recommendations in regard thereto, but all details are adjusted by the local unions with reference to local conditions.[84]

The characteristics of the trades in which the apprenticeship rules are formulated by the international union are well illustrated by the window glass workers, iron molders, glass bottle blowers, stove mounters and steel range workers.

(*a*) In the first place, the factories in these trades are usually large and localized. The number of unions is comparatively small, and, apart from these trade centers, it is practically impossible for a beginner to learn the trade, as little if any opportunity is afforded one to "pick it up." Moreover, the article produced is placed upon the general market, and thus the manufacturers are in direct competition. This makes it necessary to allow each employer the same number of apprentices, and uniformity can be best secured only when the international union assumes control of apprenticeship regulations.

[84] An exception to this statement is found in the apprentice rules of the Journeymen Stone Cutters' Association. While the locals are permitted to regulate the number of stone cutter apprentices, they may not go beyond certain limits prescribed by the Association. Explanation of this practice is found in the fact that most stone cutters are shopmen, and the product of their labor is to some extent in competition with that of other shops. This competition makes necessary uniform conditions of production if all contractors are to have a fair chance.

An apparent instance of national regulation is found in the constitution of the United Association of Journeymen Plumbers, which provides that "where there is no agreement relative to apprentices, and a new agreement is being framed, the employment of helpers and apprentices shall be entirely prohibited." As a matter of fact, locals in this trade maintain whatever ratio they see fit or are able to secure. An excessive use of helpers in the past has resulted in a disproportionate number of journeymen finding their way into the trade, and the law of the international union abolishing apprentices and helpers was an effort to reduce the trade to normal conditions.

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(*b*) Again, those national unions whose members are all of the same trade have less difficulty in formulating national apprenticeship rules. It is the plan of the United Brewery Workmen to organize locals, including engineers, firemen, brewers, maltsters, bottlers, coopers and team drivers, into one international union, but uniform apprenticeship rules could not be enforced by this national organization. At least one of the trades included in the United Brewery Workmen, namely, the coopers, represents highly skilled labor, maintains a strong international union, to which most workmen at the trade belong, and controls its own apprenticeship rules. The International Association of Car Workers, which includes persons employed as car builders, truck builders, car repairers, car painters, car inspectors, car oilers, air-brake inspectors, air-brakemen, car cleaners, roundhouse employees, some of which are skilled workmen, cannot because of the diversity of employment maintain uniform rules for beginners.[86]

The apprenticeship regulations of four trades represented in the International Typographical Union, namely, the English compositors, the German compositors, the stereotypers and electrotypers, and the photo-engravers have their apprenticeship rules at least in part determined by the International Typographical Union, but these regulations do not apply to the three remaining unions, that is, the typefounders, the mailers and the newspaper writers.

The International Association of Machinists attempts to maintain uniform international apprenticeship regulations. "One apprentice is allowed to each shop, irrespective of the number of machinists employed, and one to every five machinists thereafter; and no boy shall begin to learn the trade of machinist until he is sixteen years old, nor after he is

[86] Certain kindred or allied trades, for example, the printing trades, the glass trades, the textile, clothing and allied trades, the building trades, the metal and machinery trades, the wood working and allied trades work together for purposes of more efficient organization and greater effectiveness of administration, but the differences within each group preclude any attempt on the part of these bodies to establish a uniform apprenticeship regulation.

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twenty-one years of age." Furthermore, he must serve four years at the trade; but it is a well-known fact to all members of the craft that the rule is hardly more than the recorded expression of opinion of what should be the rule. Great diversity of practice exists among the local unions. The conditions under which this industry must be carried on are, in some respects, not unlike those in the building trades. In the first place, local unions are scattered throughout the entire country in highly different environments. Again, the different grades of work which a machinist is called upon to perform range from repair work, which does not usually require a high grade of skill, to the work performed by those engaged in the construction of the most complicated machines and delicate instruments.

The difficulties encountered in requiring a uniform term of apprenticeship for all those desiring to enter a trade are plainly manifest in the iron molding trade. The skill of the employees varies greatly, ranging from that required in molding plain pieces to the skill necessary for the construction of elaborate and complicated machinery. The employers in the National Founders' Association use unskilled labor on many kinds of work. But the union has opposed this on the ground that if unskilled laborers are allowed to perform even a few of the minor processes the tendency will be for an ever-increasing portion of the work of the trade to gravitate to these poorly equipped workmen.

Attempts have been made with success in some trades to classify different parts of the process of manufacture according to the degree of skill required. The use of much unskilled labor is thus permitted. In most cases, the unions seek to enforce their apprenticeship regulations upon all prospective journeymen.

Apart from the economic characteristics of the trades and the governmental peculiarities of the unions, custom has been a factor in determining whether the national or the local union shall regulate apprenticeship. When certain policies have been followed for years, they are not readily changed, even when conditions change.

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Purposes of Apprenticeship Rules.—Whether apprenticeship rules are formulated by the locals or by the international unions, their purposes are identical. Unionism stands primarily for a shorter work day, an increased wage, and more favorable conditions of employment. Apprenticeship regulation constitutes a part of the machinery used to attain these ends. It has been asserted that "the chief motive which influences the unions in shaping their apprenticeship rules is the desire to maintain their wages by diminishing competition within the trades. The only other motive, which is not included within this formula, is the desire, for reasons which may be classed as artistic, to prevent a lowering of the standard of skill. This feeling cannot be supposed to exert more than a minor influence upon actual policies."[87] This statement is true in part only. While the individual member, busy at his daily labors and with little, if any time for considering the larger union policies, may consider only the restrictive side of apprenticeship, the more intelligent and broad minded leaders lay stress on the fact that the maintenance of high wages is assured not only by diminishing competition, but rather by maintaining a high standard of skill among the members. It is claimed that, were the unions able to compel every workman going to the trade to conform strictly to the apprenticeship rules as to training, it would be unnecessary to limit the number of apprentices.[88]

The position of many of the union leaders is expressed by the secretary of the Bricklayers and Masons' International Union, who states that "our only aim and object is to establish, not only by our own laws, but by enactments of the legislatures of the different states, a proper regula-

[87] Report of the Industrial Commission, Washington, 1901, Vol. 17, p. 53.

[88] It frequently happens that, in shops where all parties observe strictly the law regarding beginners, the full quota of apprentices allowed is not always desired. The ratio of apprentices to journeymen permitted by the United Hatters of North America (Constitution, 1903, Art. XVI) is one to ten, but the published list (Journal of the United Hatters of North America, July 1, 1899, p. 11) of apprentices and journeymen actually in service among the different unions reveals a ratio varying from one to eight to one to thirty-five.

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tion governing the employment of apprentices, so that their proficiency, when they have rendered the required years of service, provided in their bond of indenture, will be of the best, and thus they will be a credit to their vocations. Organized labor seeks to turn out the highly skilled mechanics. We want the boy to be taught not only the common rudiments of the trade but also the higher orders. . . . We do not seek, however, to prohibit the taking on of apprentices, . . . What we do seek, however, is to provide regulations governing their employment, and, as to restriction in number, we only intended it in the sense that will permit and provide for proper care being exercised in their welfare and advancement, and to the end that the boy may be taken care of more than seven months in the year."[39]

A high general standard of workmanship is desirable in any trade union (*a*) to the members as individuals, (*b*) to the union as a whole on account of the relation of such a standard to collective bargaining.

(*a*) The original and primary purpose of the apprenticeship system, whether maintained under the indenture, established by custom, or enforced by the early trade unions, was to provide opportunities for boys to learn a trade, thereby ensuring an adequate supply of well trained mechanics for each trade. The journeyman was, during the early period, an exceedingly important person in his immediate vicinity. Oftentimes, the community depended upon his labor for the particular article of his craft, while his ability as a skilled mechanic was highly respected. He manifested great pride in the excellence of his workmanship. On the other hand, he detested the unskilled workman of his craft, whose activities tended to lower the trade standards of efficiency.

Pride in high-class workmanship still characterizes the skilled journeyman. Mechanics take a deep interest in the general standard of skill for the entire trade as well as pride in their own individual ability. The feeling against

[39] Thirty-ninth Annual Report of the President and Secretary of the Bricklayers and Masons' International Union, Indianapolis, 1904, pp. 414–415.

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the incompetent workman goes to the extent of seeking to exclude him from the organization.

(*b*) A prime difficulty in collective bargaining lies in the necessity, inherent in all bargaining, of agreeing upon a measure. If the workers in a trade possessed approximately equal ability, a common wage scale for that trade could more easily be agreed upon. But the presence of a large number of comparatively unskilled workmen offers serious complications. The better workmen are inclined to maintain a high standard, while the incompetence of the inferior workman tends to lower the scale. Since the union rate is a minimum, it is easy for the rapid, well-trained workman to secure the union rate; but the less competent journeyman can often secure that rate only with difficulty. Even the stronger unions hesitate to raise the union rate unduly, lest those unable to command it become, as non-union workmen, a powerful opposing force.

One way of solving the problem is to reduce these inequalities between individual workmen. Raising or lowering the rate does not lessen the difficulty as long as workmen of marked difference in skill and dexterity are found among members of the same trade. To secure a force of workmen of fairly uniform ability is one purpose of the apprenticeship regulations. The ideal conditions for a perfectly just standard rate, that is, exactly equal ability on the part of each workman, cannot be realized; but wide differences as to skill among men of the same trade may be greatly reduced. Well-devised and rigidly enforced apprenticeship rules thus become in many trades the prerequisite of a just standard rate.

The restrictive side of apprenticeship rules is prominent in certain unions. The secretary of the St. Louis local of the International Brotherhood of Electrical Workers had no hesitation in declaring to the writer that it was the policy of his union to exclude all but the best grade of workmen. This was accomplished by maintaining rigid apprenticeship rules, high initiation fees and thorough en-

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trance examinations. A similar policy of restriction has been followed in recent years by the plumbers. Highly skilled labor is necessary to perform successfully the highest grades of work in this trade. But many plumbers are engaged entirely on repair work, which does not require much training. Plumbers working on repair work were taken into the union. If a long apprenticeship had been required, these workmen for the most part could not have been members.[40] Moreover, each journeyman was permitted to engage a helper at a wage much smaller than his own. The helpers, after being trained a year or so, frequently became journeymen. The presence of such a large number of half-trained workmen in the union threatened to cause a great reduction in wages. The International Union, under these circumstances, took vigorous steps to reduce the number of journeymen by restricting the number of apprentices and helpers. The constitution requires that "where there is no established agreement relative to apprentices, or where the agreement has expired, and a new agreement is being framed, helpers and apprentices shall be entirely abolished."[41]

[40] Inasmuch as a very small amount of capital was required to open a shop, a journeyman plumber could easily set up in business for himself. Not only the workmen but their employers also suffered from the lax system of apprentice regulation.

[41] Constitution and Rules of Order of the United Association of Journeymen Plumbers, etc. [n. p.] 1902, Article XIX, sec. 5.

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CHAPTER III.

Character of Apprenticeship Regulations.

Entrance upon Apprenticeship.—Several influences operate together to keep each trade supplied with apprentices. The natural tastes and desires of the boy and the influence of parents and friends are more or less indefinite and intangible, but other influences may be noted with a greater degree of exactness:

(*a*) As between the employer and the union, it is the former who takes the initiative and induces boys to enter the trade.

(*b*) In the constitutions of some of the older organizations the right of the journeyman to teach the trade to his son or to some member of his family is explicitly recognized. Thus, in the constitution of the Stone Cutters' Union, provision is made that, while any local union may regulate the number of apprentices in each yard within its jurisdiction, stone cutters' sons in every case must have the preference. Similarly, in the apprenticeship rules adopted by the carpenters' union of Tacoma, Washington, it is specifically stated that "nothing in this article shall be construed to prevent any minor son working with his father, and under his instructions, said father being a member of this union."[42] The lathers of Cleveland, Ohio, go as far as to provide that "no apprentice shall be admitted to work in any shop unless he is the son of a member of this union, in good standing and above sixteen years of age."[43] The Window Glass Workers, restricting the number of apprentices for the blast of 1902, still permitted "a father to take

[42] Section 13 of apprenticeship rules, adopted by Tacoma unions; see The Carpenter, September, 1902, p. 4.

[43] By-laws and Working Rules of the Wood, Wire and Metal Lathers' International Union, Local No. 2 of Cleveland, Ohio, revised 1903. (Cleveland, 1903.) Art. XIII, sec. 1.

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his son or a brother to take his brother, or a member to take the son or brother of some other member of the Window Glass Workers' Association."[44]

The right of the father to train his son in his own trade is a custom of long standing, and has been strong in piece work trades; but, at the present time, few unions permit journeymen to take their sons as apprentices. The Window Glass Workers limit the right by a regulation that "no apprentice shall be granted to any one who has not been a member of the Association for three years."[45]

The formal application for apprenticeship, where required, is much the same in all trades. Usually, the boy and, in some cases, the employer or journeyman to whom he is apprenticed must appear before the local union. Typical regulations in this regard are those of the Journeymen Stone Cutters' Association, which provide that "each apprentice, upon going to the trade, shall go before the branch under which he is to serve his time, at the first regular meeting, giving his name, age and place of residence, the name of the firm he is apprenticed to; and, if same is considered satisfactory, he shall be taken under the protection of said branch, and the recording secretary shall keep a record of the name in the book kept for that purpose, and a copy of the record shall be sent to the general office to be kept on file."[46] The International Broom and Whisk Makers' Union requires that "any organized shop desir-

[44] By-laws of the Window Glass Workers' Association of America, Pittsburg, 1902, Art. 3, sec. 2.

[45] The requirement of American citizenship, so rigidly enforced in the glass industries, is doubtless due to the strong competition of American goods with those made in foreign countries, and also to the immigration of foreign workmen. However, the high protective tariff on window glass, except for small sizes, and the large initiation fee levied upon foreigners, prevent effective competition from that source. Thus, they provide that "no blower, gatherer, flattener or cutter shall be eligible to become a member of the Window Glass Workers' Association of America who has not been in this country for a period of five years, beginning July 9, 1902, and a full-fledged citizen of the United States. That the initiation fee shall be fixed at the sum of five hundred dollars." By-laws, p. 4, sec. 14.

[46] Constitution of Journeymen Stone Cutters' Association (Washington, 1900), Art. V, sec. 2.

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ing an apprentice shall make application to the international executive board through the local union on blanks furnished by the international secretary for the purpose. The general executive board shall grant the permission in accordance with the trade rules of the district in which the factory is located."[47] The Bookbinders' Union requires that "a certificate of apprenticeship shall be furnished by the central secretary to be issued by locals to apprentices in the beginning of their term, and presented by them to the union when application is made for admission as a journeyman."[48] The requirement of the Hat Finishers is very stringent: "All boys, before being allowed to go to work, must appear in person at a meeting of the board of officers consisting of the president, vice-president, secretary, treasurer and finance committee and have their names registered on the books of the Association." Furthermore, "when a boy applies to be registered, he must present to the board of officers his name and age, also the written consent of his guardian, and of the proprietor of the factory in which he intends to work."[49]

The Window Glass Workers' Association requires that all applications for apprenticeship must come from journeymen. A special blank, containing information as to the age, citizenship, relatives, etc., of the apprentices is made out by the chief preceptor, and transmitted to the board of examiners. This body makes an investigation, and submits the result with recommendations to the preceptory. The application is finally passed upon by the executive board of the International Association. The executive board thus has definite knowledge concerning the character of the apprentices recommended, and retains entire control of the number received. The unions in the glass industry, by

[47] Constitution, Laws and Due Book of the International Broom and Whisk Makers' Union, Amsterdam, New York, 1904, Art. III, sec. 4 of the constitution governing local unions.

[48] Constitution, By-laws, Standing Rules and General Laws of the International Brotherhood of Bookbinders, New York, 1905, p. 32.

[49] Constitution and By-laws of the Hat Finishers of the City of Newark, New Jersey, 1881.

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placing control of apprentices in one central body, are able to regulate the number received in the trade as a whole. They have succeeded in enforcing the most rigid apprentice rules. The plan followed by the Pen and Pocketknife Grinders' and Finishers' Union is similar to that of the glass workers. "Any member of the union who desires to take on a boy, applies to the grievance committee. After obtaining their consent, the application goes to the executive board. Each member is allowed one boy, preferably his own son for whom he must pay twenty-five cents per month dues, until he attains the age of eighteen years."[50]

The secretary of the local is in most unions required to keep a complete list of all apprentices beginning or ending their term within the jurisdiction of his local, and to report to the international union at stated intervals. In cases where a joint agreement with large firms exists, it is common for a permanent joint arbitration board to have charge of all questions concerning apprentices, and to keep a record of their progress. The name, place and time of those entering upon and completing apprenticeship terms are printed in many of the trade journals.

In most unions, boys are apprenticed to the employer, to whom they are responsible and with whom contracts are made. The apprenticing of boys to individual journeymen occurs in only a few industries, and in most of the trades is positively forbidden, except that occasionally, as has been noted, fathers are permitted to teach the trade to their sons. The unions must maintain a close supervision over apprentices lest they run away, and become members of another local before they have served the full term.[51] This is especially difficult in the building trades, and among the machinists and cigar makers. The journeyman often re-

[50] Constitution and By-laws of the Pen and Pocketknife Grinders' and Finishers' Union of America, Bridgeport, Conn., p. 6, secs. 15–16.

[51] Section 9 of the agreement for 1902 between local unions and the Builders' Association of Chicago provides that all apprentices indentured to members of the Carpenters and Builders' Association shall report to the joint arbitration board at its meeting on the first Thursday in January, April and October of each year.

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moves to another locality before the apprentice has completed his term. The employer is more permanently situated. For this reason, the policy of apprenticing to employers is favored.

The terms upon which the applicant agrees to become an apprentice are embodied in a verbal or written contract or an indenture, the last form being generally recommended, but little used. Thus, the convention of the United Brotherhood of Carpenters and Joiners, held at Detroit in 1888, recommended to the local unions that "all boys entering the carpenter trade with the intention of learning the business, shall be held by agreement, indenture or written contract for a term of four years."[52]

In order that the boy may be tested as to ability, fitness and willingness to work, the employer is ordinarily permitted to take him on probation, the probationary period varying in different trades and places from two weeks to six months. An agreement between the Master Plumbers' Association of Lynn, Mass., and the plumbers' local union provides that the first three months shall be on probation.[53] The Connecticut masters' convention in 1895 made elaborate provision for a probationary period. "Any boy wishing to learn the plumbing trade, a certificate shall be issued to him by the local union if there be one; if not, then by the state organization that he is a regular apprentice, stating time and amount of pay he shall receive each year during his apprenticeship. The six months, during which he is on probation, shall count as part of his term."[54]

Having been duly apprenticed under conditions acceptable to the union and to the employer, the boy goes to his work under their joint care and protection. He is ordinarily required to carry a card, for which a small fee is usually,

[52] For apprenticeship rules approved by the Detroit convention, see The Carpenter, August, 1893, p. 11.

[53] Agreement between Master Plumbers' Association of Lynn, Mass., and Vicinity, and the Journeymen Plumbers' Association, No. 77, sec. 3; see Plumbers' Journal, September, 1895, p. 2.

[54] Report adopted by Connecticut Master Plumbers' Convention, Plumbers' Journal, September, 1895, p. 2.

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though not always, charged. In some unions this card is renewed quarterly, and any apprentice not carrying the proper quarterly card is not permitted to work.[55] The apprentice, in a few unions, is charged an admittance fee, payable in full or in part upon his entrance to the trade. The Brotherhood of Boiler Makers and Iron Shipbuilders demands half fees of the boy; and, if a beneficiary member, he receives half the benefits. Moreover, when the boy becomes of age or is able to command the wages, he must pay the remaining half fee. In the Upholsterers' International Union the boy, after six months' service, is required to take an apprentice card, for which he must pay one dollar.

Age of Apprenticeship.—The minimum age at which an apprentice may enter upon or complete his trade is determined in a large measure by the characteristics of each trade. Where much physical strength is required in order to perform the work properly, or where great danger is encountered by those engaged in a trade, it is uncommon to find apprentices received under sixteen or eighteen years of age. In crafts where less strength is needed, and where the beginner is less liable to accidents, apprentices are received at a much earlier age. The Travelers' Goods and Leather Novelty Workers' International Union receives boys at fourteen. The Chartered Society of the Amalgamated Lace Operatives of America will accept beginners at the trade at any age under twenty-five. The minimum age is influenced in some trades by factory legislation. Thus the International Brotherhood of Bookbinders maintains the rule that "no person shall be permitted to enter the trade as an apprentice under the age of sixteen nor over the age of eighteen years at the recognized branch of the book binding industry, provided that in states and provinces where factory age limit is less

[55] "Apprentices must receive apprentices' working card at the commencement of each quarter, namely, January, April, July and October, and shall pay fee, five cents per month for the same;" Constitution and By-laws of the Operative Plasterers' International Association, No. 46, of the City of Indianapolis and Marion County, Indiana, 1900, Art. VII, sec. 6.

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than sixteen years, fifteen years shall be the minimum age for apprentices."[56]

Most unions regulating apprenticeship prohibit the entrance upon apprenticeship of persons over a certain age. In a few unions old men are granted the privilege of beginning an apprenticeship. Other unions are rigid in this respect, permitting apprentices to enter only during a stated period covering a very few years. The Journeymen Stone Cutters' Association thus provides that "no applicant under the age of fifteen or over eighteen shall be allowed to go to the trade."[57] Section 2 of an agreement, dated May, 1902, between local unions of carpenters and the Chicago Builders' Association provides that "the applicant for apprenticeship shall not be more than seventeen years of age at the time for making application."[58] The International Steel and Copper Plate Printers' Union of North America requires that apprenticeship must begin between the ages of seventeen and eighteen, but the membership qualifications usually demanded of apprentices may be waived by consent of the international union.

The maximum age restriction is often criticised as working a hardship upon those who have been unable to begin at the required time, but are afterwards desirous of taking up the trade. It is argued, however, by the union that a workman who has not begun to learn his trade until late in life is generally unwilling to submit to ordinary apprenticeship regulations. He will not work with boys for a long term at small wages. In fact, he cannot usually afford it, if he must provide for a family. As a result, the man apprentice soon severs his relation with the employer, and in order to secure higher wages seeks work as a journeyman. The man, therefore, who begins his trade at twenty-five or thirty years of age seldom becomes a capable workman. The position of

[56] Constitution, By-laws, Standing Rules and General Laws of the International Brotherhood of Bookbinders, New York, 1905, p. 32, sec. 2.

[57] By-laws of the Journeymen Stone Cutters' Association of North America (Washington, n. d.), Art. V, sec. 2.

[58] See The Carpenter, May, 1902, p. 7.

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the union and the employers is concisely expressed in the declaration of policy adopted by the Mason Builders' Association and the Bricklayers' Unions of Boston and vicinity. "To prevent the taking of apprentices at an immature age, when they may be considered on the average as physically unfit for such laborious work, and not sufficiently educated to warrant leaving school, and to discourage the beginning of apprenticeship, at a time when the individual may be considered, on the average, as having passed that period when the faculties of mind and body are in the condition which is most receptive of instruction, and most readily adaptive to the requirements of the trade, the following time and term are fixed."

Term of Service.—The term of apprenticeship varies in the different trades from two to seven years, three and four years being the ordinary term. The bakers and confectioners and the broom makers require that applicants for membership shall have had two years' experience. The watch case engravers require apprentices to serve five years. Some locals in the plumbing trade keep the boy at the trade six years. The machine printers require that each apprentice at the trade shall serve seven years.[59]

In theory the time of service required is supposed to represent the time necessary for a boy of average ability, under fair circumstances, to learn the trade well enough to demand a journeyman's wages. In the same trade, however, the term varies in different localities. Thus the term of apprenticeship in carpentry in Tacoma, Washington, is three years, while in many eastern cities four years are required. In the plumbing trade the term varies from two to six years. This variation arises partly from differences in the class of work done, but more especially because the local bodies are stronger in some places than in others. A long apprenticeship term is the rule where the union is strongly organized,

[59] The apprenticeship system recently put in operation by the Knabe Piano Company in their large factory in Baltimore provides for a course of training extending over a period of eight years. The system has been evolved by the company entirely apart from the influences of the union.

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or the finer grades of work are to be learned; but where the union is weak or the work desired is in the main of an ordinary type, the tendency is toward a shorter term.

The requirement of a long apprenticeship term in any trade that may be picked up tends to defeat the very purpose for which the system is established. Instead of inducing the boy to learn his trade in the prescribed manner, a long term of service is likely to cause him to take up his trade as a non-unionist. Not infrequently in communities where unions are weak or poorly organized the apprentice wearies of his long service as a beginner at small wages, and leaves his employer to seek work on his own responsibility with non-union men. Ordinarily the union fixes only the minimum term of apprenticeship, and leaves to the individual initiative of the apprentice the termination of the period of apprenticeship, but some unions find it necessary to set a maximum term. Thus the piano and organ workers will not permit apprentices to serve longer than three years without permission of the local union. The cigar makers follow the same policy. In 1897, E. Presnail, a cigar manufacturer, appealed to the president of the Cigar Makers' International Union against union No. 55 of Hamilton, Ont., for compelling an apprentice who had served three years at the trade to join the union. The appellant claimed that the firm was working under a four-year agreement and was not subject to the apprentice rule of the union. The president decided that unless the firm could produce the written agreement or contract the apprentice must become a member of the union.[60]

Perhaps no trade illustrates better than cigar making the prime difficulty encountered in any attempt to fix by national law a uniform term of apprenticeship for all branches of the craft. Cigar making consists in the main of two parts, bunch making and rolling. Each may be learned by beginners within three or four weeks, and within as many months the new apprentice has learned both branches sufficiently well to make the cheaper grade of cigars. Beginners are

[60] Cigar Makers' Journal, April, 1897.

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permitted to handle only inferior material. Those who operate machines require even less time to learn the trade than those who work by hand, but their product is also of an inferior quality.[61] However, the total amount of cheap cigars consumed is quite large, creating a constant demand for workmen who possess just sufficient ability and skill to enable them to make such a grade of goods. The three-year term of service, demanded of apprentices in strictly union shops, is perhaps not too long for those engaged in manufacturing the best brands of cigars, since this class of workers must make bunches, roll the wrappers and make cigars of many sizes.

The length of the apprenticeship term is supposed to be of sufficient duration and the training of such a nature that the learner will be enabled to perform not only the cheaper grades of work, but to render the highest class of service demanded in the industry. Where both classes of workmen are employed in the same trade as in cigar making, it becomes a serious question with the union how far to press the rule which requires all apprentices to serve a stated number of years before being admitted to the union. If made too rigid, the number excluded from the union would be large, and the influence of the organization would be seriously endangered. If too liberal in its apprenticeship requirements, the trade would be filled with incompetent workmen, and a high standard of workmanship and a high rate of wages would be difficult to maintain.

On the whole, the result of enforcing a long apprenticeship in skilled trades is to secure the better class of workmen as members of the union, but to exclude those who possess less skill. The conflict of interest between these classes of workers makes it impossible for all the local unions in the trade to enforce the same membership requirements. The difficulty is generally minimized by receiving as members not only those who are known to have served the full time, but also any others who can command the scale of wages regardless of the time spent in learning the trade.

[61] Cigar Makers' Journal, March, 1883, p. 4.

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Disputes over the length of time the apprentices must serve have occasionally arisen between employers and the unions; but, in most cases, the terms have been fixed by custom of long standing, and, with perhaps a few exceptions, have not been reduced because of any modern changes in the trade.

The length of a service year varies in different unions. The fires in glass furnaces are drawn during July and August, and the work of all apprentices and journeymen is discontinued during this time. Some unions require that the apprentice be kept at work during a certain number of months each year. Thus the apprentice provisions in the agreement between the Chicago Builders' Association and the local unions specify: "The contractor taking an apprentice shall engage to keep him at work for nine consecutive months in each year and see that during the remaining three months of the year the apprentice attends school. The apprentice shall, during the months of January, February and March of each year, attend a technical school acceptable to the joint board, and a certificate that he has done so will be required before he is allowed to work during the year."[62]

Journeymen in the building trades rarely have more than nine months' steady work in a year. The average term of employment for apprentices cannot be more, and is often much less. If the employer has contracts to justify continuous work, the apprentice may be engaged during the entire year, assuming no agreement to the contrary. In the event of business depression or during periods of inactivity, it may be impossible for the employer to fulfill his contract, and the apprentice may be unable to secure work from any other source for more than a few months of the year. Occasionally the apprentice finds some other form of employment when thus temporarily released, or the employer may pay him as though he were actually at work. During periods

[62] "Joint Arbitration Agreement between the Chicago Masons and Builders' Association and the United Order of American Bricklayers and Stone Masons' Union, No. 21, of the Bricklayers and Masons' International Union. April 1, 1903, to May 1, 1905." (n. p. n. d.)

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of business inactivity journeymen are usually discharged, and, up to a certain limit, apprentices retained. The opposite arrangement is, however, sometimes made.

In order to prevent boys from leaving their employers before finishing the stated term of service, the unions have enacted rigid rules with reference to runaway apprentices. The apprentice must begin and end his term in the same shop unless he is prevented from doing so by the death or removal of his employer, or is granted a clearance card by the union. Should the apprentice leave without just cause, he cannot be received by any local union, nor even be permitted to work with union men.[63] The following regulation of the Painters', Decorators' and Paperhangers' Union is typical of the building trades in this respect: "When a boy shall have contracted with an employer to serve a certain number of years, he shall on no pretense whatever leave said employer and contract with another without the free and full consent of said employer, unless there is just cause or such change is made in consequence of death or relinquishing of business by the first employer; any apprentice so leaving shall not be permitted to work under the jurisdiction of any local union in our Brotherhood, but shall be required to return to his employer and serve out his apprenticeship."[64]

The "runaway column" is a prominent feature of the trade journals in the stone cutters', carpenters' and bricklayers' unions. The published list contains the name, age and residence of the delinquent boy, the residence of the employer, a statement of the term that the boy has served,

[63] Exceptions to the rule are sometimes made when the apprentice is the son of a journeyman. A Baltimore employer of stone cutters told the present writer of the following experiences: The son of a journeyman was apprenticed to the employer. The father of the boy moved to another city taking his son with him. The employer appealed to the union to reinstate the apprentice and compel him to comply with the terms of the contract. This the union refused to do, claiming that it was an unwritten law that a journeyman could take his son with him wherever he might go.

[64] Constitution of the Brotherhood of Painters, Decorators and Paperhangers of America (Lafayette, 1901), Art. XLV, sec. 6.

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any clue to his possible whereabouts and a warning to all members of the union to be on the alert to locate him.

The apprentice cannot be summarily discharged except for incompetency or constant neglect, or, at least, if discharged without an explanation satisfactory to the union, his place cannot be filled until the expiration of the time for which he agreed to serve.[65] The employer has the final word as to the fitness of the boy to continue at work, and can discharge him at any time. But, in general, the particular journeyman under whose instruction the apprentice has been placed is regarded as best qualified to speak as to the boy's ability and conduct, and the discharge of an apprentice is ordinarily upon his recommendation or that of the foreman of the shop.

Should the employer suspend business during the time the apprentice is serving his term, some unions endeavor to find new positions for beginners thus displaced.[66] Ordinarily the apprentice is required to finish his term within the jurisdiction of the union where he was first engaged. The stone cutters provide: "If any employer should cease to carry on the stone cutting business, the apprentices in his employ shall be compelled to finish their time under the jurisdiction of the branch with which they started, provided they can obtain employment."[67] Should the apprentice be unable to obtain employment within the jurisdiction of his union, he is given a "clearance card" to be presented in

[65] A typical rule in this regard is that adopted by the bricklayers of Baltimore. "Any employer who shall from the want of employment or any other cause than the incompetency of the apprentice to learn the business, transfer or discharge his apprentice, shall be debarred from taking any other apprentice, until the time for which the said apprentice was registered to serve has expired." Constitution and By-laws of the Bricklayers' Protective and Beneficiary Union (Baltimore, 1901), Art. XXX, sec. 2.

[66] "Should any employer suspend or give up business, it is the duty of a subordinate union to provide a place for any apprentices that may be thrown out of employment, and desire to finish their time, and, at the expiration of their apprenticeship, they shall, if found competent, be entitled to journeymen's wages upon joining the union." Constitution and Rules of Order of the Bricklayers' and Masons' International Union of America (North Adams, Massachusetts, 1902), Art. XIII, sec. 3.

[67] By-laws of the Journeymen Stone Cutters' Association of North America (Washington, 1900), Art. V, sec. 4.

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making application to the union in another place. Such an applicant must give proof of his former connection, and if accepted, must serve such length of time as may be fixed by the union receiving him.[68]

When a shop becomes non-union, any apprentice refusing to leave his work, when ordered away by the officers of his local union, is usually liable to any penalty which that body may see fit to impose. The United Hatters and a majority of other unions permit the local bodies to adjust such matters. In cases of long-continued strikes or lockouts the instruction of the apprentice may be seriously interrupted, so that it is impossible in the remaining time of his term for him to acquire sufficient skill to entitle him to be classed as a journeyman. Under such circumstances, it is customary for the union to grant a permit to the apprentice, that he may have an opportunity to continue his apprenticeship elsewhere. In the majority of strikes, whether the apprentice remained at work or not would not materially affect the position of either party to the controversy, while, on the contrary, to interrupt apprenticeship for any great length of time seriously handicaps the apprentice in learning the trade. Some unions, therefore, will not permit the apprentice to be penalized for remaining at work in a struck shop.

Any apprentice who has served a portion of his term of service in a foreign country and desires to continue the same

[68] "Any applicant for time to finish his trade should he find a place as an apprentice in some shop where they have not the full complement of apprentices prescribed by the branch to which he applies, shall be required to give proof by his work that he has already served part of his time before he shall be entitled to the protection of this association, and a majority of the members working in the shop where he is employed shall determine how long he shall be required to serve, and shall personally testify before the meeting of the branch their opinion of the time he shall serve, and in case a majority cannot be present they shall delegate one or more of their members to appear before said branch meeting with their decision in writing. No applicant of this character shall be more than twenty years of age, and all apprentices or improvers must present themselves before said branch meeting within two weeks after they are engaged." Constitution and By-laws of the Journeymen Stone Cutters' Association (————, 1892), Art. VI, sec. 6.

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in the United States is ordinarily required to furnish proof of the work done as an apprentice in his native land. The wire weavers are more rigid in this respect than most other unions. They maintain that, since the "weavers" in foreign countries do not restrict apprentices in the proper ratio for the benefit of the trade, "any persons starting their apprenticeship in any foreign country and not serving their legal or full apprenticeship, will not be recognized or allowed to finish their apprenticeship in this country."[69]

Number of Apprentices.—Perhaps the most prominent feature of apprenticeship regulation is a limitation on the number of apprentices. This limitation is expressed in terms of the ratio of the number of apprentices to the number of journeymen, or to the shop or the contractor. The limitation on the number of apprentices, more than any other regulation of apprenticeship, is determined by local conditions. Thus, the common rule for the granite cutters is one apprentice to every gang or fraction thereof, a gang consisting of thirteen men. But, in Oregon, the ratio as fixed by state agreement is one to twelve.[70] In the Milford, N. H., agreement, the ratio is one to fourteen,[71] and at Westerly, R. I., it is not more than one to five journeymen.[72] The regulations of the Maryland branch provide that "firms employing five journeymen five months in the year are allowed one apprentice, two for first gang (thirteen), and one for each additional gang." At Richmond, Va., employers using five journeymen or less are allowed not more than two apprentices, and one additional apprentice for every five additional journeymen regularly employed,[73] and at Jacksonville, Fla., one apprentice is

[69] Constitution and By-laws and Schedule of Prices of the National Executive Board of the American Wire Weavers' Protective Association, Newark, 1902, Art. V.

[70] See Bill of Prices for Cutting Granite in the State of Oregon, July 1, 1898, to May 1, 1900.

[71] See Bill of Prices for Milford, N. H., March 1, 1902, to March 1, 1903, p. 4, par. 4.

[72] See Bill of Prices for Westerly, R. I., to March 1, 1900, p. 6, sec. VI.

[73] See Bill of Prices for cutting granite in Richmond, Va., May, 1900, p. 12.

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allowed in each shop where fifty men may be employed.[74]

In some industries, notably in the building and printing trades, the chief unions are largely recruited from artisans who have learned their trade in the smaller places. Under these conditions, the unions in the larger places frequently limit severely the number of apprentices, counting upon the influx of workmen.

Similarly, in those unions in which the number of members fluctuates greatly a local union frequently raises the apprentice ratio in order to prevent an increase of apprentices from the temporary presence of journeymen within its jurisdiction. In the stone cutting industry, it frequently happens that twenty-five or more journeymen are sent temporarily to one locality. Were the ordinary ratio adhered to under such circumstances, the number of apprentices received would be greatly increased, and, as the journeymen thus employed remain only until the job on which they are employed is completed, the apprentices would be much in excess of the number allowed under normal conditions, and more than the needs of the locality would justify. Furthermore, the same journeymen are often transferred to the jurisdiction of another local during the period covered by the term of the apprenticeship, thereby augmenting the basis upon which apprentices may be taken. The following communication to the Hatters' Journal describes the practice of some employers in that industry: "At the time our laws gave manufacturers the privilege of employing an apprentice for every six or seven journeymen employed, advantage was taken of the law to employ six, twelve or eighteen men for a few weeks, so that the additional number of apprentices could be registered for the shop, and then the journeymen were discharged. This was unfair to the journeymen put on the road, but the injustice did not stop there. When dull times came, work was found for the apprentices, and the journeymen were sent home."[75]

The Glass Bottle Blowers' Association maintains the rule

[74] See Agreement Governing Granite Cutting in Jacksonville, Fla., March, 1903, to March 1, 1904.

[75] Hatters' Journal, October, 1898, p. 11.

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that "firms, who from any cause reduce their number of journeymen must also reduce their number of apprentices so that at all times they shall be within the provisions of the law."[76] The practice of discharging apprentices and retaining journeymen during periods of business inactivity or in times of emergency is, however, not an accepted trade-union policy. In the first place, to discharge an apprentice during the period of training means a serious interruption in his course of instruction, and lessens his opportunities of becoming a skilled workman. If compelled to serve the term at different places under different instructors, the apprentice will in all probability acquire less skill than if his training had been continuous and in the same shop. Again, the discharged apprentice usually wanders from place to place, is employed in union and non-union shops, and is often received in some local union before he has served the specified term. The net result is a shortened term with a corresponding increase in the ratio of apprentices to journeymen.

Two chief forms of ratio are used in restricting the number of apprentices. The first is a fixed ratio, which remains the same however great the number of journeymen employed.[77] The second is a declining ratio, in which the proportion of apprentices is reduced as the number of journeymen increases. Some unions limit the number of apprentices which may be employed in any one shop, beyond which no additions are allowed.[78] Thus, the stone

[76] Constitution, By-laws and Appendix of the Glass Bottle Blowers' Association of the United States and Canada, Camden, New Jersey, 1903, p. 29, sec. 10.

[77] "It is agreed by parties hereto, that no master plumber shall have more than one apprentice to every three men or fraction thereof, and no boy under sixteen years of age shall enter the trade." See Agreement between the Masters and Plumbers of Spokane, Washington, Art. 13, Plumbers' Journal, June, 1899, p. 13.

[78] "Each joint shop shall be entitled to one apprentice on an average of ten to fifteen men, based on men employed between March to November 1, and one additional apprentice for every additional fifteen men employed based upon the above average. But, in no case, shall any shop be allowed to have more than four apprentices." See By-laws and Trade Rules of the District Council of Brotherhood of Painters, Decorators and Paperhangers of America, St. Louis and Vicinity, 1903, p. 20, sec. 1.

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cutters provide: "Any branch of the Association shall have the privilege of regulating the number of apprentices in each yard; one where less than fifteen men are employed, two where less than one hundred, and in no case to exceed four in any yard."[79]

Ordinarily, apprenticeship rules are favorable to the smaller shops, in that they are allowed a greater number of apprentices than are permitted to the larger shops. Thus apprentices are not allowed at all in the newspaper offices of New York, Philadelphia and other large cities. This rule was passed by the local typographical unions, but is not actively opposed by the publishers since it does not pay to train apprentices. The same is true in the cigar making industry and in the building trades. The large employers are ordinarily less desirous of having apprentices. At present, a large majority of those learning the above mentioned trades do so in small shops, often in small towns, where it is less expensive to all concerned. However, since the city employer is able to pay a higher wage than the employer in the small town or office, he has no difficulty in obtaining skilled workmen.

In certain trades where many incompetents have formerly been admitted, and an effort is being made to raise the standard of wages, apprentices are prohibited altogether for a given period. The case of the Plumbers has already been cited.[80] When the Watch Case Engravers' International Association of America was organized, that body attempted to enforce a rule that "no person, male or female, should be admitted into the engraving trade for a term of four years." This was defended on the ground that some manufacturers had employed a large number of boys, but had taught them only part of the engraving trade, with the result that a large number of poorly trained engravers had been admitted into the union, so that the high standard of workmanship, formerly maintained by the craft in general, was

[79] Constitution of Journeymen Stone Cutters' Association, adopted 1900 (Washington, n. d.), Art. V, sec. 7.

[80] See supra, p. 74.

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being lowered, and few fully equipped artists were being trained.

In many cases, the ratio is fixed by agreement with the individual employers or employers' associations, and may be changed yearly if desired. With perhaps a few exceptions, such as the iron molding and glass industries, the ratio has become fixed by custom, and is seldom changed. The wide difference in existing ratios is due largely to variations in the local labor supply. If sufficient workmen be present to carry on the work, no one is anxious to take on new apprentices and those applying are easily discouraged. At other places, employers will not be bothered with apprentices, preferring to employ an extra number of journeymen at a higher rate, if there be a sudden demand, and to discharge them when business resumes its normal condition. In the matter of apprentices as well as in other features of unionism the rigidity of the rule and the degree of strictness with which it is enforced depend in a large measure upon the strength of the local union, and upon the power of the employers.

The Wage of the Apprentice.—The wage received by the apprentice is usually a matter of agreement between the boy and his employer, although some unions insist upon making certain provisions in this particular. Thus the Broom and Whisk Makers, working by the piece, provide that "apprentices shall receive the same amount of pay as the journeymen receive for their work."[81] Such a regulation, when rigidly enforced, removes the temptation to substitute the cheap labor of the boy for the more expensive services of the skilled journeymen. However, any local union that possesses power sufficient to enforce such a rule is also in a position to limit efficiently the number of apprentices by direct law. The Metal Polishers, Buffers, Platers, Brass Molders, Brass and Silver Workers' International Union provides that the wages of the apprentice must be

[81] International Broom and Whisk Makers' Union, Due Book and Constitution, Amsterdam, New York, 1904, p. 47, sec. 2.

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regulated by the local union in whose jurisdiction the apprentice is employed.[82] The Toledo screw workers' union provides that "all apprentices working day work shall receive not less than $1.25 per day of ten hours, and $2.00 shall be allowed for piece work for ten hours."[83] The Amalgamated Lace Operatives vary the amount received by the apprentice during each year of his service according to the work actually done. They also provide that the journeyman shall charge for his services as instructor of the apprentice. This is thought to be a just compensation to the journeyman, who must lose time from his own machine while instructing the beginner. The rule covering this point provides that the apprentice "shall serve three years, and be paid as follows: sixty per cent [of the journeyman's rate] the first year, seventy-five per cent the second year, and ninety per cent the third year on one half of the racks made on the machine, the difference to be equally divided between teacher and employer. In any case where the employer does not claim his share of the percentage, the same goes to the apprentice; and, where there is no teacher, the apprentice shall be paid on all racks made on the machine, and shall receive the teacher's percentage."[84]

Where apprenticeship is regulated in great detail by conferences between employers and employees, the wages of the apprentice are usually provided for in the agreement. This is in most cases an advantage to the apprentice, since the union is able to obtain better terms for him than he could secure for himself. The joint arbitration agreement made by the Chicago Masons' and Builders' Association and the local bricklayers' union contains the provision that "the minimum wages of an apprentice shall not be less than two hundred and sixty dollars for the first year, three hundred for the second year, three hundred and fifty for

[82] Constitution and By-laws, 1903, Art. XXXIV, sec. 2.
[83] Constitution and By-laws of Screw Workers' Union No. 11, Toledo, 1889, Art. VII, sec. 3.
[84] By-laws of the Chartered Society of the Amalgamated Lace Curtain Operatives of America, Philadelphia, 1902, Art. IV, sec. 1.

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the third year and four hundred for the fourth year, payable semi-monthly."[85] Some employers pay the apprentice a certain wage while he is serving his term with the promise of an additional sum to be paid upon the completion of the apprenticeship, the purpose being to hold the boy throughout the entire term and to encourage him to take advantage of the opportunities offered. This plan is not possible in some trades because of the irregularity of employment and, therefore, the frequent necessity of changing employers.

Training of the Apprentice.—During the early part of the apprenticeship period the boy's labor is worth little, and he is usually given the odd jobs about the shop or placed on coarse work under the care and instruction of a journeyman or foreman. In the glass industries, he is permitted to begin with the small sizes; the cigar makers allow him to make the cheaper grades, for which a poor quality of tobacco is used, while the iron molders require the beginners to make the simplest pieces. In some unions, frequently among the plumbers, the apprentice is assigned to a particular workman to whom he must go for all instruction; in others, very often among the stone cutters, he is permitted to ask questions of any journeyman engaged on the work, and the workman so questioned must devote a reasonable amount of time to giving him the desired information. The opportunities of the apprentice to learn the trade depend largely upon the character of the boy, the attitude of the employer, and the interest of the journeyman. In some cases, the apprentices are neglected; in others, the employers, in order to make the boy pay his way as soon as possible and in the end become an efficient workman, take personal interest in him and give him the best advan-

[85] Joint Arbitration Agreement between the Chicago Masons and Builders' Association and the United Order of American Bricklayers' and Stone Masons' Union No. 31, of the Bricklayers' and Masons' International Union, April 1, 1903, to May 1, 1905, p. 18.

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tages.[86] It has long been the practice of the employers of stone cutters in Baltimore to pay the tuition of their apprentices at the Maryland Institute so that they may acquire the principles of drawing and sketching. The progress of the apprentice during his term of service thus depends upon his ability, upon the opportunities given him by the employer and upon the interest taken in him by the journeymen. Unless a detailed agreement be formulated, the union makes only general rules in these particulars. Usually they are expressed in the form of a charge to the journeymen, the foreman or the members of the union to see that the boy has competent instruction and opportunities for advancement. The following paragraph from the rules of the Stone Cutters is typical: "It shall be the imperative duty of the shop stewards and members to see that all apprentices in their respecive shops are given as good work as they are able to do, in order that they may become skilled workmen, fitted to take their places as journeymen in our midst."[87]

The specific work to be performed by the apprentice during each year of his term is, in many cases, defined by the constitution of the union, or specified in the general agreement. Where the trade is best learned through a series of operations rather than in one difficult process, it is customary for the union to determine how long the apprentice shall serve at each portion, and to insist that he be advanced at stated intervals from one part to the other. A typical requirement is that of the Saw Smiths' Union,

[86] Very satisfactory results have been obtained by the Atkins Company, saw manufacturers, of Indianapolis, by requiring one experienced and highly skilled journeyman to devote his entire time to the apprentices. They are grouped together apart from the journeymen and placed at work under his immediate supervision and care. When sufficient progress has been made and the boy possesses a fair knowledge of the trade, he is placed on the work with the journeymen. Where the industry permits, this seems to be an admirable arrangement, for such a plan does not allow the apprentice to interfere with the work of the journeyman. Moreover, the apprentice is sure of thorough instruction.

[87] By-laws of Journeymen Stone Cutters' Association, 1892, Art. V, sec. 8.

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which states that "it shall be the right of every apprentice, and he shall also be required to learn all branches of anvil work done in the shop in which he is employed."[88] The United Hatters are more specific for they demand that "all apprentices registered for finishing, can be used by the employers for the first twelve months at any of the minor branches, such as soft hat curling or ironing machines or plating, and the second year, at flanging; but, in all cases, they must serve their last year at the bench. . . . If registered for the making department, after being instructed, they shall continue for the space of nine months at sizing, then six months at blocking, then six months at stiffening. After this space of time, employers can put them at any branch of the business in which they may require their services."[89] The Window Glass Workers' Association represents a trade of four distinct processes, namely, gathering, blowing, cutting, flattening; and the time an apprentice is required to serve at each trade is three years; but usually he is permitted to blow after having served three years as gatherer. However, from lack of experience in the work, he must begin upon small sizes; and, although he receives the regular rate, his income is smaller than that paid to the journeyman. A New York corporation held certain patents, and, making a specialty of building chimneys, applied to a local of the bricklayers' union for permission to take on an apprentice. The local refused, and referred the matter to the national executive board. This body also refused the company an apprentice on the ground that the boy would not have a fair opportunity to gain an adequate knowledge of bricklaying.

No uniform rule prevails in regard to testing the apprentice's proficiency. A prominent employer complained to the present writer that boys, who had served the four years of apprenticeship required by the local stone cutters' union,

[88] Official Proceedings of the Fourth Annual Convention, Saw Smiths' Union of North America, Indianapolis, 1902, p. 12, sec. 4.
[89] United Hatters of North America, New York, 1903, Art. XI, secs. 5 and 6.

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were permitted to join the union and to receive the same rate of wages as other journeymen, although they might have spent but a few months in each year in learning the trade. Other unions are more strict in this regard, requiring the apprentice to serve an additional year if found in any way deficient. The agreement between the Chicago builders and the Chicago building trades union thus provides: "In case an apprentice at the end of his term of four years for want of proper instruction in his trade is not a proficient workman, and if, after a thorough investigation, the joint arbitration board finds that the contractor to whom he had been apprenticed did not give the proper instruction and opportunity to learn the trade, he may be required to serve another year with whomsoever he and the joint arbitration board may determine, and at such a rate of wages, less than the minimum in his trade, as they may determine; and the difference between said rate and minimum scale in his trade shall be paid through the joint arbitration boards by the contractor to whom he was apprenticed."[90] In some cases the apprentice is required to present a diploma or a statement of proficiency from his employer. The Baltimore bricklayers provide: "An employer wishing to have an apprentice shall make application in writing or in person to the union, said application to be presented by the boy who wishes to be taken as an apprentice, said apprentice to serve the term of four years, to learn the art of bricklaying or stone masonry, and his name and length of time he is required to serve shall be registered in the book provided for that purpose, and his employer furnished with a certificate of registration, said certificate to be returned to the union endorsed by the employer at the expiration of the time of apprenticeship."[91]

Admission of Apprentice to the Union.—Admission to the union may be regarded as the final step in apprenticeship.

[90] Agreement between Chicago Builders' Association and Local Union, sec. 5.

[91] See Working Code between the Bricklayers' and Masons' International Unions, Nos. 1, 4, and 5, of Baltimore, Maryland, for the Years 1903 and 1904, p. 8, sec. 23.

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Indeed, apprentices are taught unionism along with the trade, and special inducements are offered to secure their entrance into the union. The painters provide: "Apprentices in the last year of their service shall be admitted free of charge and entitled to a seat in the union without a vote and be free from all dues and assessments. On completion of their apprenticeship, they shall be entitled to full benefits and all rights to full membership by conforming to Section 1 of this article. No capitation is required of apprentices, but in cities where business agents are employed, local unions may charge one dollar initiation and ten cents per month dues."[92]

When the apprentice is received into the union as an apprentice member, his rights are less than those of journeymen members, he pays less in dues and receives smaller benefits. For example, the jewelry workers will receive as members all apprentices over sixteen years of age upon payment of one dollar and a half, which is one half of the minimum initiation fee for journeymen. The dues of apprentices are one half the regular dues, but such members may not vote nor speak except to bring complaint or to ask for information. Also they are entitled to one half of the benefits received by regular members. At the conclusion of their apprentice term, they are received as full members without any additional initiation fee.

[92] Constitution of the Brotherhood of Painters, Decorators, and Paperhangers of America (Lafayette, Ind.), Art. VII, sec. 8.

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CHAPTER IV.

Estimate of Union Apprenticeship Rules.

The apprenticeship system in nearly all the unions is unsatisfactory. Side by side with the capable mechanic, a great number of incompetents are found in the trades. This condition may be attributed to three general causes: (*a*) the large influence of local unions in determining apprenticeship rules; (*b*) the effect of changes in business organization and industrial technique; (*c*) the disregard of apprenticeship rules both by employers and by the unions. Each of these influences will be briefly considered.

(*a*) The character of some trades, notably cigar making and the building trades, as has been noted, makes it necessary to leave apprenticeship rules to local determination. This policy has resulted in a wide range of treatment, in many cases unwise and inadequate. A nicer adjustment of rules to local conditions has been secured, but many local unions have been unable to enforce effective apprenticeship regulations. Some unions make no pretense of maintaining an apprenticeship system, and others make rules of the loosest imaginable description. In consequence, the large, strongly-organized unions observe elaborate apprenticeship codes; in the smaller and weaker unions in the same trade a brief statement of a few lines contains all that is said in regard to apprentices, and even these provisions are often openly neglected.

(*b*) The provision made for training the modern apprentice is, in most cases, inadequate on account of the change in industrial and business methods. Although all the trades have not been affected by the introduction of machinery and the consequent subdivision of the trade, yet important and, in most cases, radical changes have thus been introduced.

The effect of machinery upon the apprenticeship systems

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formerly maintained by labor unions has been twofold. (1) In some trades, notably those of the boot and shoe makers and the garment workers, the machines have been simplified and the trade subdivided to such an extent that unskilled labor has largely supplanted skilled workmen. In such trades the apprenticeship system has almost entirely disappeared.

(2) The same effect has not resulted from such inventions as the linotype, the planer, and some of the machines used in mill work and in the large machine shops. These machines require, for their successful operation, the skill of the trained craftsman. The physical strength formerly exerted by the workman is largely supplied by steam power. In these trades only trained craftsmen or journeymen in the last months of their apprenticeship are permitted to take charge of the machines. The care that must be given the machine, the difficulties in learning how to operate it, the cost in case of damage, together with the element of personal danger to the operator, must be considered when determining the effect of the introduction of a new machine upon the craftsmen. Many of the finer grades of work formerly done by hand are now done almost entirely by machinery, propelled by steam. Yet so carefully must the machine be handled, so accurately must the measurements be taken, and so nicely must the machines be adjusted that only fully experienced men are intrusted with their care. The operator or tender of these machines has a task to perform fully as difficult as that of his predecessor who performed the same work by hand. In some cases the machine operator has even a more difficult and responsible task than was required of the hand worker, so that he is required by the union to spend the same number of years in learning the trade as the former, but, having mastered it, he is able to produce far more rapidly than before. The pace set in the modern shop, which contains much costly machinery, is not conducive to thorough training, since the chief object, necessarily so because of keen competition, is to produce the maximum amount in the shortest time at the minimum cost;

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and, as long as the employer can secure competent workmen, he will not take the time nor expend the money to train apprentices. The result has been that in many instances the apprentice must learn the trade as best he can.

The building trades may serve as an illustration of the influence on apprenticeship of typical changes in technique and in business organization. Machinery has been extensively introduced only in stone cutting.[93] But subdivision is present in all the trades, and, in all of them, the problem of specialization has consequently arisen. The workman who can do but one part of the work of the trade is rapidly increasing, though his increase is constantly deplored. The specialized workman is less dependent upon the instruction of others. In case of business depression the workman who has picked up his trade changes to another more readily than the all-round workman who has spent years learning his craft. Moreover, he does not share the feeling of respect for skilled work that inspires the true mechanic. In none of the building trades, however, has the term of service for apprentices been reduced because of the subdivision of the trade. On the contrary, it has resulted in an urgent demand for higher standards of workmanship.[94]

[93] The "planer" is used extensively in large, permanently located shops. It is not confined to smoothing the stone, but is capable of cutting different designs in hard or soft stone by simply changing the "bit," which can be easily made by the blacksmith. The machine is of great weight, run by steam power and somewhat expensive. It can be operated by one or two mechanics and will do the work of eight or ten men. The pneumatic tool operated by compressed air is another labor-saving device of recent date in this trade. Each cutter supplied with one is able to make much more rapid progress in rougher work with less expenditure of energy than with the ordinary mallet and chisel. However, it is not to be supposed that these important inventions have in any wise revolutionized the trade. The machines render the best results in the hands of the regular stone cutters, and have occasioned no change in the apprenticeship rules of the trade. If the apprentice desires to become a machine operator and his employer has no opening for him, he is placed on the machine during the last year or six months of his term.

[94] The recent change of material used in the structure of the framework of many large office buildings and apartment houses has wrought remarkable changes in methods of construction, and has substituted comparatively unskilled labor for highly skilled service. The structural iron worker, possessing more physical strength and

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A further explanation of the inadequate training of the apprentice in the building trades is found in the organization of modern building operations. The erection of large structures is done in the main by large construction companies. A typical building company of this character maintains offices in the principal cities of the United States, with headquarters in New York City, and competes for business in every section of the country. Superintendents are sent from place to place to take charge of the work secured. Each local arranges its apprenticeship rules with the agents of the company in its own jurisdiction. Should business not justify the continuance of an office in any particular field, it is closed or transferred to another city. One of the chief elements in the award of every contract of size is the time in which it can be executed, and the keenest rivalry exists among the several offices. Every condition is thus unfavorable to the maintenance of apprenticeship regulations. The manager of the office is constantly seeking new business for his company, and has little concern for the work in progress. The superintendent, sent out by the company to take charge of the work, goes from place to place as orders are received from headquarters, and is only concerned with the problem of getting the building completed in the shortest time at the least cost. The foreman occupies much the same relation to the superintendent as the latter does to the company. He must keep his men moving or lose his position. The individual journeyman must satisfy his foreman or be discharged, and has little if any time to instruct boys. In fact, there is no personal tie or intimate relation between the beginner and those who have charge of the work. The boy is simply not wanted, for no large contractor desires apprentice labor merely because it can be secured at a low wage. The time consumed in teaching the trade to beginners would cause a

daring than real technical ability and skill, has supplanted to a certain extent the trained bricklayer, stone mason and carpenter. With the introduction of ferro-concrete as a building material, the superintendent and foremen, aided by hatchet and saw carpenters and ordinary laborers, are able to construct the entire frame-work of the building.

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delay in work, more expensive than the sum saved on wages. Indeed, the apprentice is physically in the way on a large building, where all work must be done in order and on time. Under the indenture system, the contractor was supposed to make a sacrifice during the first part of the apprentice term, as the boy was unable to pay his way. This sacrifice is required to a far greater extent under the present system; and the contractor, hard pressed by competition, is unwilling to make it.

Much work in the building trades is still done by small contractors. Every city of size has many of them. Often conducting non-union establishments, they receive more apprentices than are allowed in union shops. The work performed by this class of contractors is less hurried in time and less precise in quality, and will usually permit of boy labor under the direction of a skilled foreman. Many learn the trade in these small shops. In fact, it is from the number who thus "pick up" the trade, and from those who learn it in small cities and in rural districts, as well as from that smaller number who have served a formal term of apprenticeship, that the demands of the larger employers, who require a better class of workmen and pay the highest wages, are met.

(*c*) The apprenticeship rules nominally in force are often wholly disregarded by both union and employer. In fact, because the employer cannot control his apprentices as under the indenture system, many apprentices leave the shop where they have learned the trade and seek employment elsewhere. The apprenticeship system, as we have seen, is esteemed by the union not only as a thing desirable in itself, but also as a device for carrying out larger policies. The old requirement for union membership was the completion of a term of apprenticeship, but, in most cases, this is no longer a requisite. If the applicant is able to command the standard rate of wages, he will experience little difficulty in gaining admittance to the union, regardless of the way in which he has acquired his skill. In fact, many crude work-

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men first join the union and gain the greater part of knowledge of the trade afterwards. The present policy of the unions in trades where it is impossible to secure effective enforcement of apprenticeship rules is to get every workman at the trade into the union. When an applicant of doubtful ability applies for membership, the question considered is not when and where did he serve his apprenticeship, but will he do less harm to the cause inside or outside of the union; and upon the answer to this question largely depends his acceptance or rejection. During the time of strike the union has no hesitation in sacrificing any of its requirements for admission and even in offering special inducements to workmen to join the union in order to gain accessions and to win the strike.[95]

For several years the Glass Bottle Blowers' International Union waged a continuous and bitter warfare against certain non-union firms in New Jersey. During this time the regular apprenticeship rules were constantly sacrificed that they might induce the workmen to withdraw from these unfair shops. Urged by representatives of the union, many men and boys were induced to leave the non-union shops, were received as members of the union, and sent elsewhere to work at the regular standard wage; or, in case employment could not be found, they were supported temporarily by the union. An ex-member of the executive committee of the Glass Bottle Blowers' Union showed the present writer a list containing the names of one hundred and fifteen

[95] A business agent of the wood workers' union of Indianapolis stated that not only would such possible "strike breakers" be received into his union free of cost, but that transportation would be provided, in order that they might go elsewhere to work. It is a well-known fact that the non-union men gotten together by an employer during a strike may gradually find their way into the union after difficulties are adjusted. During recent conferences between representatives of the Iron Molders' Union and National Defense Association in regard to the apprentice question, it was admitted by both parties that previous to the formation of agreements the frequency of strikes supplied a large number of workmen. After the agreement went into effect, the number of strikes was greatly reduced, and the supply of workmen from this source was so seriously diminished that the legitimate needs of the trade necessitated an increase in the number of apprentices.

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men and two hundred and thirty-one boys whom he had persuaded to leave the non-union shops. These blowers, many of whom had been at the trade but a few months, were made full-fledged members of the unions and supported by that body until employment could be secured elsewhere for them. However, as these men and boys were often sent far away from the New Jersey shops for employment, and since they did not possess ability and skill sufficient to command the union rate in first-class shops, it is probably true that the incompetent ones were soon discharged by their employers and doubtless finally dropped their membership in the union. Such flagrant abuses of the apprenticeship regulations are justified by the union as "emergency measures," but the "strike and emergency workmen" often prove to be undesirable members.

The most promising tendency in the direction of bettering the conditions of apprenticeship is found in the fact that apprenticeship regulations are in an increasing number of cases formed by joint agreement between the employer and the union, and not, as formerly, by the union or the employer alone. With perhaps a few exceptions, this change in the method of framing laws has brought about no radical change in the character of the rules themselves. The old apprenticeship regulations of the union have ordinarily become the basis for new ones in the agreement, or they have been accepted in their entirety by employers. The acceptance of the agreement by employers and unions tends to concentrate the best thought of both parties upon the subject, with the result that in many instances elaborate and efficient rules have been jointly enacted and enforced. A typical agreement between employers' associations and unions, such as exists in many large cities, covers the following points:

1. Time of Beginning, the Length of Term, and Qualifications of the Apprentice: The qualifications here referred to are in the main moral and educational, and as a rule are of slight importance.

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2. Obligations of the Apprentice: Every regular apprentice must agree to render continuous service as provided by the rules, and furthermore to accept all other conditions specified throughout the agreement.

3. Agreements of Employers: Every person permitted to receive apprentices binds himself to furnish competent instruction and to give the boy ample opportunity for learning the trade during the latter's term of service.

4. Registering Apprentices: Each organization keeps a complete record of all apprentices. A beginner registered under such circumstances is generally given a card by the joint committee, which attests the fact that he is a properly registered apprentice.

5. Limitation of Apprentices: Practically all apprenticeship agreements provide for a uniform ratio of beginners to journeymen. In some industries extensive investigations have been made; and, as far as possible, a fair and adequate ratio has been adopted.

6. Supervision of Apprentice: Perhaps the chief advantage secured for the apprentice through the agreement is the provision usually made for his supervision and control during his term. Where both sides are strongly organized, they mutually watch each other and compel a strict enforcement of the agreement. This control of apprentices is given to the joint committee, who consider all questions arising and exercise judicial functions in hearing appeals or settling disputes. In some cases this committee is given power to cancel the apprenticeship, to transfer apprentices in case of death or removal of employer, or to discharge them for any other reason.

7. Rights of the Employer: In case the employer becomes dissatisfied with the apprentice because of inability, laziness or unwillingness upon the part of the boy to render faithful services or for other just cause, he may appeal to the joint committee, which has the power to discharge the apprentice if the charges are proved.

8. Rights of Apprentice: The apprentice, on his part, has

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the privilege of carrying any grievance against his employer to the joint committee.

9. Pay of Apprentice: Previous to the formation of agreements the apprenticeship regulations were, in the main, formed entirely by the union; but, in a great majority of cases, the employers and apprentices were unrestricted in adjusting the rate of wages. In fact, the fixing of wages for the apprentice by the union is comparatively a recent development, which has been accelerated by the growth of the agreement.

10. End of Apprenticeship Term: At the conclusion of the prescribed term the employer must notify the joint committee. The employers' organization and the union are notified. If the agreement has been fairly observed, the apprentice is given a certificate, and is recognized as a journeyman.

Agreements relative to apprenticeship, up to the present time, have been almost entirely local. The most notable exceptions are the agreements of the Iron Molders' Union, the Glass Bottle Blowers' Union and the Window Glass Workers' Union. In these trades the apprenticeship rules are formed by an agreement between the international unions and the employers' associations.

In the machinists' trade, where employers of labor, such as railway and electric road companies, operate over a large territory, it not infrequently occurs that apprenticeship is regulated by agreements between the railroad officials on the one side and the representatives of the international union on the other. In these agreements uniform conditions are provided for all shops of the company, or, as is sometimes the case, for all shops within certain clearly defined portions of the road.

The nature and scope of such formal apprenticeship agreements, even in the same trade, vary greatly with different localities. Wherever the union has been strong and has maintained a well-developed system while acting alone, detailed apprenticeship rules covering every phase of the question are usually inserted. In other localities only that

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particular phase of the apprenticeship question which has been a source of trouble is provided for in the agreement. For example, the agreement between the bricklayers' union no. 4, of Missouri, and the Contractors' Association contains the single provision that all apprentices shall be governed by the laws of the union.[96] An agreement at Columbus, Ohio, between the local stone masons' union and the Master Stone Masons' Association has but one short article concerning the apprentice, fixing the ratio of one apprentice to six journeymen and the term of service at three years.[97] In fact, the typical form of apprenticeship agreement among the smaller unions is either concerned with regulating the number of apprentices that may be taken or with providing some form of training for beginners. In agreements of this nature little, if any, provision is made for enforcing the apprenticeship rules, and, as a rule, they are rarely more effective than the apprenticeship regulations formerly maintained by the union. Even in more formal agreements no uniformity as to terms exists among the locals. In the granite cutting industry the joint agreement of 1900 at Rocklin, Cal., provided for a ratio of one apprentice to eight journeymen.[98] At Waldboro, Me., for the same year, one apprentice was allowed for every ten journeymen cutters.[99] At Vinal Haven, Me., one apprentice to twelve journeymen was permitted,[100] while the agreement for 1902 at Milford, N. H., allowed only one apprentice to each fourteen cutters.[101] Such variations occur to a much greater extent in the limitation of apprentices, but, even as regards age, qualifications or methods of training beginners, there is often no uniformity among the local unions.

In the more elaborate apprenticeship agreements found in

[96] See Thirty-seventh Annual Report of the President and Secretary of the Bricklayers' and Masons' International Union, for the Term Ending December 1, 1902, p. 92.

[97] *Ibid.*, p. 23.

[98] See Bill of Prices for Cutting Granite in Rocklin, Cal. (n. p., 1900).

[99] See Bill of Prices for Waldboro, Me. (1900).

[100] Bill of Prices for Vinal Haven, Me., dated June 9 (n. p., 1900).

[101] Bill of Prices for Milford, N. H., 1902–03, p. 11, sec. 4.

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some large cities, all regulations for beginners at the trade are prepared by joint arbitration boards. The apprenticeship rules formed by agreement in many trades in New York City and Chicago cover every phase of the apprentice question, even to the smallest detail. The agreement between the Masons' and Builders' Association of Chicago and the local bricklayers' and stone masons' union represents one of the best systems of apprenticeship now in force among the building trades.[102] It provides that apprentices shall not be prohibited by any union, and that they shall not be amenable to union rules, but shall at all times be under the control of the employers, subject to the rules of the joint arbitration board. In addition to the usual features of apprenticeship agreements as to ratio, age, wages and probation term, an important provision is the requirement that all apprentices shall attend school during certain months of the year.[103] An important feature of the agreement is the provision for enforcing the regulations adopted. When a grievance arises between an apprentice and an employer or a journeyman, the point at issue is submitted in writing to the presidents of both organizations. Should they be unable to agree, the

[102] See apprenticeship rules in the "Joint Arbitration Agreement between the Chicago Masons' and Builders' Association and the United Order of American Bricklayers' and Stone Masons' Union, No. 21, of the Builders' and Masons' International Unions, April 1, 1903, to May 1, 1905."

[103] All contractors taking on apprentices are obliged to keep them at work for nine consecutive months in each year. During the months of January, February and March, the apprentice must attend a technical school acceptable to the joint board. As evidence that he has fulfilled this requirement, the apprentice is required to present a certificate from the school before he is permitted to begin his work. For every day the apprentice is tardy or guilty of disorderly conduct at school he must serve an additional day of apprenticeship without pay. For each case of failure to attend school, except for good excuse, two days' service without pay is added to his term of apprenticeship. Any contractor who prevents his apprentice from attending school during the months mentioned is fined five dollars per day for each day. Likewise, any member working on any building during said months with an apprentice is also fined five dollars for each day he works. Furthermore, any contractor who fails to provide employment for his apprentice or does not keep him at school shall pay him the same as though he were at work or at school.

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question is submitted to the joint arbitration board. In case this body is unable to reach a decision, an umpire is called in to sit with the board and cast the deciding vote. Both organizations have agreed to compel members to comply with the apprenticeship rules as jointly agreed upon and adopted.

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